United Nations A/HRC/36/35

General Assembly

Distr.: General
31 May 2017

Original: English

Human Rights Council
Thirty-sixth session
11-29 September 2017
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on the Right to Development on its eighteenth session (Geneva, 3-7 April 2017)

Chair-Rapporteur: Zamir Akram

GE.17-08711(E)

Please recycle

Contents

		Page
I.	Introduction	3
II.	Organization of the session	3
III.	Summary of proceedings	4
	A. General statements	4
	B. Report of the Secretary-General and the United Nations High Commissioner for Human Rights on the right to development	9
	C. Contributions by States to the implementation of the right to development	10
	D. Informal consultations by the Chair-Rapporteur	10
	E. Interactive dialogue on the implementation and realization of the right to development	11
	F. Standards for the implementation of the right to development	15
	G. Consideration of the draft right to development criteria and corresponding operational subcriteria	16
IV.	Conclusions and recommendations	16
	A. Conclusions	17
	B. Recommendations	18
Annex		
	List of participants	19

I. Introduction

1. The present report was prepared pursuant to Human Rights Council resolution 9/3 in which the Council decided to renew the mandate of the Working Group until it has completed the tasks entrusted to it, and that the Working Group would convene annual sessions of five working days and submit its reports to the Council.

2. The mandate of the Working Group on the Right to Development established by the Commission on Human Rights in its resolution 1998/72 is to monitor and review progress made in the promotion and implementation of the right to development as elaborated in the Declaration on the Right to Development, at the national and international levels, providing recommendations thereon and further analysing obstacles to its full enjoyment, focusing each year on specific commitments in the Declaration; to review reports and any other information submitted by States, United Nations agencies, other relevant international organizations and non-governmental organizations on the relationship between their activities and the right to development; and to present for the consideration of the Commission a sessional report on its deliberations, including advice to the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the implementation of the right to development, and suggesting possible programmes of technical assistance at the request of interested countries with the aim of promoting the implementation of the right to development. The mandate was extended by the Human Rights Council in its decision 1/102 and renewed in successive resolutions.

II. Organization of the session

3. The Working Group convened its eighteenth session in Geneva from 3 to 7 April 2017. The session was opened by the United Nations Deputy High Commissioner for Human Rights. In her opening statement,[1] the Deputy High Commissioner assured the Working Group of the High Commissioner's continued and full support in its efforts aimed at the promotion of and respect for the right to development. She noted that the right to development had its roots in decolonization and the quest for economic, not just political, independence. The human rights of all were to be fully protected and economic development was to be achieved through the creation of a more collaborative and cooperative vision of global economic relations, including respect for the interests of developing States in those relations. One dominant theme of the right to development was therefore the creation of fairer economic conditions for all countries, whereby developing countries could genuinely exercise their economic autonomy without being subjected to the hegemonic interests of dominant States.

4. At its first meeting on 3 April 2017, the Working Group re-elected by acclamation Zamir Akram as Chair-Rapporteur. In his opening statement,[2] the Chair-Rapporteur noted the endorsement by the Human Rights Council on 24 March 2017 of the appointment of Saad Alfarargi as Special Rapporteur on the right to development. The newly created mandate (see Council resolution 33/14) includes contributing to the work of the Working Group, taking into account its deliberations and recommendations while avoiding any duplication and engaging with relevant stakeholders for cooperation in implementing the right to development. He highlighted that the implementation of the Sustainable Development Goals was in its second year and that the theme of the meeting of the High-level Political Forum on Sustainable Development, to be held in July 2017, would be "Eradicating poverty and promoting prosperity in a changing world". He considered it important to maximize the impact of all those processes for development and to ensure complementarity, cooperation and coordination among the various mechanisms and

[1] The full text of the statement is available from www.ohchr.org/EN/Issues/Development/Pages/18thSession.aspx.

[2] The full text of the statement is available from www.ohchr.org/EN/Issues/Development/Pages/18thSession.aspx.

processes. The Working Group subsequently adopted its agenda (A/HRC/WG.2/18/1) and programme of work (A/HRC/WG.2/18/INF.1).

5. During the session, the Working Group considered the report of the Secretary-General and the United Nations High Commissioner for Human Rights on the right to development (A/HRC/33/31), contributions by States to the implementation of the right to development, standards for the implementation of the right to development (A/HRC/WG.2/17/2) and comments and views from relevant stakeholders on the draft right to development criteria and corresponding operational subcriteria. The Working Group also engaged in an interactive dialogue with experts on the implementation and realization of the right to development.

III. Summary of proceedings

A. General statements

6. Speaking on behalf of the Non-Aligned Movement, the representative of the Bolivarian Republic of Venezuela referred to the XVII Summit of the Movement, held in that country in September 2016, at which the commitment to promote and protect all human rights through constructive and cooperative international dialogue, capacity-building, technical assistance and the recognition of good practices was reaffirmed. The Heads of State and Government highlighted the historical significance of the adoption of the Declaration on the Right to Development 30 years ago, which requires a profound change in the international economic structure. The realization of the right to development was more than ever a necessity and should be central to the implementation of the 2030 Agenda for Sustainable Development. The implementation of the agenda was dependent on an integrated, holistic and comprehensive approach by all States and the mainstreaming of the right to development in the policies and operational activities of the United Nations and the international financial and multilateral trading systems. They expressed deep concern about the challenges and obstacles within the Working Group and stated that international cooperation was integral to the implementation and realization of the right to development, and could help the Working Group overcome the challenges that hindered progress. They hoped that the Working Group would be able to develop a comprehensive and unique set of standards that would contribute to the drafting of a legal instrument that would make development a reality for all.

7. The European Union remained strongly committed to achieving sustainable development and eradicating poverty; promoting respect for all human rights and fundamental freedoms; working towards ensuring security, conflict prevention and resolution; and encouraging good governance, gender equality, human development, accountability and equitable globalization. The delegate reiterated the Union's support for the indivisibility and interdependence of all human rights, including the right to development, the multidimensional nature of development strategies and that individuals were the central subjects of the development process. While national development efforts should be supported, States — acting individually and collectively — had the primary responsibility for ensuring that their citizens benefited from development. The European Union was not in favour of the elaboration of an international legal standard that would be binding in nature, for, in its view, that was not the appropriate mechanism to realize the right to development.

8. Speaking on behalf of the African Group and expressing agreement with the Non-Aligned Movement, the delegate from Tunisia stated that, at that challenging time when the world was facing a series of crises, including economic, financial, social and climate-related crises, African States firmly believed that the realization of the right to development was a necessity. Human development and human rights were symbiotic and reinforced each other conceptually. An effective global partnership for development through human rights-based policy coherence and coordination at all levels was an important foundation for achieving the Sustainable Development Goals in an equitable and sustainable manner. The delegate called on all actors in the international community to promote international

cooperation and to redouble their efforts for the effective promotion and protection of the right to development.

9. The delegate from Pakistan, speaking on behalf of the Organization of Islamic Cooperation, stated that there was no easy path to achieve the objective of the operationalization of the right to development. In its view, the Working Group must overcome conceptual, political and practical differences and the rhetoric of questioning the basis of the right to development served no fruitful purpose and was baseless, given its endorsement in many instruments. The Working Group must now focus its energies on addressing ways and means of implementing the right to development for all. Sustainable Development Goal 17 on revitalizing the Global Partnership for Sustainable Development provided guidelines to support the realization of the right to development by addressing core issues such as resource mobilization, technological and technical support, capacity-building, open, equitable and non-discriminatory trading and financial systems, debt servicing, and data collection and monitoring in disaggregated form. Those targets have also been covered in the draft right to development criteria and corresponding operational subcriteria, which could contribute to developing a human rights-based approach towards achieving the goals.

10. The delegate from South Africa, expressing agreement with the Non-Aligned Movement, reaffirmed the importance of the right to development, including at the regional level, in accordance with article 22 of the African Charter on Human and Peoples' Rights. The right provided critical guidance to the process of development as States worked towards the goal of an international order and social justice in which all human rights could be fully realized. In the context of the disruptive effects of globalization, international cooperation and adjustment of the rules of international trade and financial institutions were necessary. The 2030 Agenda, which embodied and gave content to the right to development presented both an opportunity to and an obligation on all States. The responsibility for social development entailed sharing of responsibilities by all relevant actors, including the corporate sector. Regarding the Declaration, there still remained a significant gap in the protection of the global poor; the Government of South Africa looked forward to participating in activities to ensure that the global poor were given due attention. Going forward, there was an urgent need for the United Nations human rights machinery to ensure the operationalization of the right to development as a priority issue through the elaboration of a convention on the right to development.

11. The delegate from Sri Lanka highlighted the need to maintain the momentum of the thirtieth anniversary of the Declaration on the Right to Development and recommended that the Working Group focus on fully achieving its mandate while working towards finalizing the draft criteria and subcriteria regarding the right to development as expeditiously as possible. In striving for greater acceptance, operationalization and realization of the right to development, the High-level Political Forum on Sustainable Development, the platform for follow-up and review of the 2030 Agenda and the Sustainable Development Goals, should pay attention to the human rights aspects of development. Realizing the Goals remained a high priority for Sri Lanka in its endeavour to achieve inclusive and equitable economic progress and social advancement.

12. The delegate from Nicaragua, expressing agreement with the Non-Aligned Movement, stated that the right to development was inalienable and indivisible. The full realization of the rights of all peoples to self-determination and the attainment of that right and the right to development through the relevant human rights instruments, while maintaining the right to benefit from their natural resources was emphasized. The right to development was essential to eradicating poverty despite the significant headway already made in that direction. Nicaragua was committed to working internationally to mitigate the adverse effects of climate change and unilateral coercive measures that denied the right to development.

13. The representative of the Islamic Republic of Iran, expressing agreement with the Non-Aligned Movement and the Organization of Islamic Cooperation, stated that the right to development should not be associated with charity and generosity. The Sustainable Development Goals were mutually reinforcing in relation to the right to development. The right to development was not negligible and favourable conditions for its realization had to

be put in place. International cooperation was essential for that. In line with article 10 of the Declaration on the Right to Development, there must be a comprehensive and legally binding instrument on the right to development.

14. The representative of India stated that the right to development, despite the mixed treatment by the United Nations human rights mechanisms, remained important for an overwhelming majority of the global population. Nationally owned development needed to be complemented by equitable economic relations and a favourable economic environment at the international level. There was a need to reinvigorate the mainstreaming of the right to development and that would not be possible without a strong political will and the sustainable commitment of the international community.

15. The delegate from Cuba, expressing agreement with the Non-Aligned Movement, noted that the right to development was universal and inalienable and belonged to individuals and peoples. The main obstacles to the right to development were economic crises and inequality in international trade. With the political will of developed countries, much could be done for the realization of the right to development. Cuba was opposed to any attempt to reinterpret the right and underscored the importance of its operationalization, in particular through the elaboration of a convention on the right to development.

16. The delegate from China stated that the right to development was a right for all and an integral part of human rights. In the context of sluggish economic growth and unconventional threats, the right to development would be faced with daunting challenges. States had a primary obligation to implement the right to development. It was hoped that all parties would demonstrate political will and commitment and play a constructive role.

17. The representative of Nepal stated that, together with the 2030 Agenda, an international cooperation mechanism could ensure the provision of appropriate means and resources to foster sustainable and broad-based development in poorer countries. To bridge the gap of rising inequality, commitment was needed to refine the draft right to development criteria and operational subcriteria so as to advance towards an international legally binding instrument.

18. The representative of the Philippines, expressing agreement with the Non-Aligned Movement, noted that the right to development affirmed the centrality of the human person. The right to development provided an enabling environment for the 2030 Agenda. Development processes had to be inclusive and just, and States must be able to go beyond charity. Through constructive engagement by the Working Group, progress could be made towards achieving those goals.

19. The delegate from Egypt, expressing agreement with the Non-Aligned Movement, the Organization of Islamic Cooperation and the African Group, stated that, despite the significance of the right to development, it had yet to be fully and truly realized. The 2030 Agenda placed the right to development at its core. Egypt supported the proposal that the Working Group should advance towards an international legally binding instrument on the right to development.

20. The delegate from Indonesia, expressing agreement with the Non-Aligned Movement and the Organization of Islamic Cooperation, noted that a non-politicized and non-confrontational approach should be taken in the context of the right to development. Indonesia would engage with the Special Rapporteur on the right to development and urged other Member States to do so as well. Policy coherence and international cooperation were equally essential.

21. The delegate from Tunisia, expressing agreement with the Non-Aligned Movement and the African Group, reasserted that there was a need to set up mechanisms to monitor the work relating to the right to development. The right to development should be free from controversy so as to make the world a more prosperous place for every person. Mechanisms conducive to an international enabling environment for the implementation of the right to development and the 2030 Agenda were needed.

22. The representative of Pakistan, expressing agreement with the Non-Aligned Movement and the Organization of Islamic Cooperation, considered that the standards for the implementation of the right to development (A/HRC/WG.2/17/2), prepared by the

Chair-Rapporteur of the Working Group, covered all the broad consensual categories and elements enshrined in the Declaration on the Right to Development. Those standards could serve as basic policy guidelines and pave the way for the establishment of a normative framework. The myriad problems faced today required a multifaceted approach by States, internally, externally and collectively, including a gender-based approach, quality education, equitable and preferential market access, technological advances and support for debt servicing, which could help to establish a fair and human rights-sensitive economic and financial order.

23. The representative of Algeria, expressing agreement with the Non-Aligned Movement, the African Group and the Organization of Islamic Cooperation, noted that social and economic stability was important to ensure not just the needs of present generations, but also of future generations. The Working Group should focus on international cooperation and solidarity in relation to the right to development and the need to work on new approaches to realize the right.

24. The representative of Brazil stated that the Working Group had to conclude unfinished business and make progress with deliberations in order to be more relevant to the discussions on development, especially the 2030 Agenda. The 2030 Agenda placed people squarely at the centre of development, just like the right to development, international cooperation and the removal of obstacles to development. The profile of the right to development had to be raised, including by mainstreaming it in the work of the Human Rights Council and the United Nations system as a whole.

25. The representative of the Bolivarian Republic of Venezuela stated that, without the realization of the right to development, enjoyment of all other human rights could not be attained, and that it required the development of an adequate international legal framework in the context of the 2030 Agenda. Unilateral coercive measures against countries in the Global South impeded peoples from advancing towards full sovereignty and development, thereby violating basic human rights. The world economic crisis created by the capitalist system, the denial of resource and technology transfer and the foreign debt burden all impacted on the implementation of the right to development.

26. The delegate from Ecuador, expressing agreement with the Non-Aligned Movement, stated that a genuine global partnership was needed that would make it possible to restructure relationships between developed and developing countries and to address the unfair distribution of wealth, reform discriminatory and perverse power structures, establish an independent and transparent international mechanism to manage sovereign debt, promote fiscal justice, clamp down on tax evasion and havens and advance towards a binding instrument on business and human rights.

27. The delegate from the United Kingdom of Great Britain and Northern Ireland, expressing agreement with the European Union, stated that the United Kingdom fully supported the indivisibility and interdependence of all human rights. The right to development required the full realization of civil and political rights and the progressive realization of economic, social and cultural rights, in addition to credible development policies and good governance. The United Kingdom was not in favour of an international legal standard of a binding nature on the right to development. It was fully committed to delivering the Sustainable Development Goals, both at home and around the world, and considered the agenda a framework through which the world could combat the most pressing challenges of our time.

28. The delegate from the United States of America stated that the United States was committed to international development as a critical element of its foreign policy. The United States considered that there was a strong link between human rights and development. However, for several reasons, it has long-standing concerns about the concept of the "right to development", in terms of definition and how it has been framed. For those reasons, it had consistently expressed objection to references to "the right to development" in General Assembly and Human Rights Council resolutions, and had serious reservations with respect to the direction of the related work and had made several proposals. Although it fully agreed that changes were necessary, because of those and other concerns that it had expressed in several previous Working Group sessions, and which have yet to be

adequately addressed, it did not consider that further engagement in that session would be productive.

29. The representative of the South Centre reaffirmed its conviction of the need for systemic reforms in the international finance and economic systems. The full realization of previous commitments made in relation to the internationally agreed goals were crucial to providing developing countries with the necessary finance and technologies to support their efforts in achieving the Sustainable Development Goals. The realization of the right to development was the driving force in their implementation. Although the 2030 Agenda was universal, the representative highlighted that key principles such as the common but differentiated responsibilities were a central issue.

30. The representative of Associazione Comunità Papa Giovanni XXIII, speaking on behalf of the Geneva-based Forum of Catholic-inspired Non-governmental Organizations,[3] stated that the benefits of development had so far not been fairly distributed and that Governments must move from rhetoric to action and urgently honour their political and financial commitments to development. The Working Group should play an important role in the forthcoming High-level Political Forum on Sustainable Development by contributing to the monitoring of the implementation of the Sustainable Development Goals in accordance with the principles and content of the Declaration on the Right to Development. It was hoped that the inhibiting polarization and politicization of the debate on the right to development would cease.

31. The representative of the Indian Council of South America referred to the huge gap between the principles enshrined in the Declaration on the Right to Development and the actual realization of the right. The Council supported inclusion of the voices of all peoples in the development of an international instrument on the right to development. There were many bilateral and multilateral State and corporate agreements that did not recognize the right to development and therefore violated the rights of peoples.

32. The representative of International-Lawyers.Org referred to its projects to promote the right to development in academic circles in African countries. All States could cooperate in solidarity with each other to achieve a legally binding instrument on the right to development. Achieving that goal would provide significant impetus to furthering the implementation of the right by making it a legal obligation in a treaty. There was a need to agree on the core principles and to create a mechanism with the authority to ensure its implementation.

33. The representative of the World Federation of Trade Unions remarked that the right to development had a specific content to workers worldwide, in terms of decent work, workplace conditions that were safe and hygienic, protection of labour rights and the right to strike. It was noted that the right to development depended on the satisfaction of the contemporary needs of workers and without that, enjoyment of the right would be not be guaranteed for those facing poverty and vulnerability.

34. The representative of Hope International noted that, despite the achievements of the Millennium Development Goals, a lot still needed to be accomplished through the Sustainable Development Goals. Even with good practices and academic contributions, results were still very unequal and international cooperation was not effective. It was not advisable to approve a new treaty or resolution without action corresponding to reality. Further discussion and work within the treaty bodies and the Human Rights Council was called for.

[3] The members of the Forum include Associazione Comunità Papa Giovanni XXIII, Association Points-Coeur, Caritas Internationalis, the Company of the Daughters of Charity of Saint Vincent de Paul, Dominicans for Justice and Peace, the Salesian Sisters of St. John Bosco — Daughters of Mary Help of Christians, the International Organization for the Right to Education and Freedom of Education, the International Movement of Apostolate in the Independent Social Milieus (MIAMSI), New Humanity, the Teresian Association and VIDES International — the International Volunteerism Organization for Women, Education, Development. All statements made by the Associazione Comunità Papa Giovanni XXIII *in* the present report are made on behalf of the Geneva-based Forum.

B. Report of the Secretary-General and the United Nations High Commissioner for Human Rights on the right to development

35. The Chief of the Right to Development Section of the Office of the United Nations High Commissioner for Human Rights (OHCHR) introduced the report of the Secretary-General and the United Nations High Commissioner for Human Rights on the right to development (A/HRC/33/31). The report, submitted pursuant to Human Rights Council resolution 30/28 and General Assembly resolutions 48/141 and 70/155, contains an overview of the activities of OHCHR relating to the right to development over the period from May 2015 to June 2016, and a discussion on the 2030 Agenda for Sustainable Development and the implementation of the right to development. The annexes to the report contain key messages from OHCHR on human rights and financing for development and on human rights and climate change, which have been widely used in advocating the integration of human rights and the right to development in those important processes.

36. OHCHR carried out several activities to promote the right to development, including many to mark the thirtieth anniversary of the Declaration on the Right to Development, such as the publication of a fact sheet entitled "Frequently asked questions on the right to development"[4] and the production of a short video entitled "The right to development — development is a human right".[5] In addition to advocating the integration of the right to development into the financing for development, climate change and sustainable development processes, OHCHR sought to mainstreaming human rights, including the right to development, into United Nations system policies and operational activities and engage cooperation. To conclude, the report highlighted that the 2030 Agenda for Sustainable Development was informed by and grounded in the right to development and that follow-up and review of the implementation of the Goals provided a solid basis for assessing the progressive realization of the right to development.

37. OHCHR launched its Human Rights Appeal 2017 in February 2017. The Appeal provides a succinct overview of the fundamental challenges that the world will face in the foreseeable future and spotlights the efforts that OHCHR plans to undertake to address those challenges. OHCHR committed to support Member States in meeting their commitments and obligations in relation to the 2030 Agenda. As requested by the Human Rights Council in its resolution 33/14, the High Commissioner's next annual report will include an analysis of the implementation of the right to development, taking into account existing challenges and making recommendations on how to overcome them.

38. In the ensuing discussion, the representative of the Bolivarian Republic of Venezuela, speaking on behalf of the Non-Aligned Movement, recalled the requests to the Secretary-General and the High Commissioner to integrate the right to development into the work of the United Nations system and appealed to OHCHR to bolster the work necessary to mainstream the right to development and support developing countries in developing relevant policies. That required allocation of necessary resources and cooperation with States in order to remove any stumbling blocks to achieving the right to development. Concern was expressed about the scheduled dates for the next session of the Working Group, which coincided with other important intergovernmental human rights meetings.

39. The representatives of South Africa and Pakistan expressed agreement with the Non-Aligned Movement and stressed that more needed to be done to ensure the fulfilment of the right to development. They mentioned that the right to development-based approach had contributed significantly to promoting the inextricable nature of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. On the contrary, the United Nations human rights system had yet to adopt through an intergovernmental process a human rights-based approach to development. They noted that the report of the Secretary-General and the High Commissioner was heavily slanted on that approach. They also noted that the report did not address concrete and

[4] Available from www.ohchr.org/EN/PublicationsResources/Pages/FactSheets.aspx.

[5] See https://www.youtube.com/embed/pdKfypBTtdI.

specific activities on the promotion and realization of the right to development, but rather linked the right to development to various meetings which did not focus solely or specifically on the right to development. In that regard, clarity was sought on the disjuncture between the mandate entrusted to OHCHR and the reality on the ground. It was recommended that specific emphasis be given to capacity-building, technology transfer and sharing of best practices.

40. The representative of the Islamic Republic of Iran stated that a report on the right to development should not only focus on factual advancements, but should also have an analytical section with a development focus and recommended that the next report provide an approach for implementation and best practices.

41. The Chief of the Right to Development Section of OHCHR commented on the dates for the sessions of the Working Group and explained that the meeting calendar, including the allocation of conference rooms and services, was coordinated by the United Nations Office in Geneva. With regard to the report and the need for more clarity and content, he stated that it was not possible to include extensive details on the substance of all the events and activities owing to word limit restrictions. However, the Secretariat continued to make available detailed information on the OHCHR website. Regarding the remarks about analysis and the overall content of the report, he stated that the Secretariat reported on the comments and recommendations made by Member States and other stakeholders as endorsed in the relevant Human Rights Council and General Assembly resolutions.

C. Contributions by States on the implementation of the right to development

42. The representative of Indonesia stated that it had placed the right to development at the centre of its development policies, including national and local development planning. The 2030 Agenda had also been mainstreamed into national development planning and a legal and institutional framework with national and subnational guidelines for implementing the right to development had been developed. In terms of more specific measures, Indonesia had an advanced smart health card intended to provide households in a lower socioeconomic bracket with greater support. Sustainable Development Goal 17 calls for revitalized partnership and cooperation and Indonesia was committed to working together with other States for the implementation of the right to development.

D. Informal consultations by the Chair-Rapporteur

43. The Chair-Rapporteur informed the meeting about the informal consultations he had held in the intersessional period with regional and political groups and other stakeholders.

44. In July 2016, the Chair-Rapporteur participated in the interactive segment on combating discrimination and inequalities of the General Assembly high-level thematic debate on human rights, in New York, in which he underlined the linkages between discrimination, inequality and development. In September 2016, he presented the report of the Working Group on its seventeenth session (A/HRC/33/45) to the Human Rights Council and held informal consultations with the coordinators of regional and main political groups active in the Working Group and with representatives of intergovernmental organizations and civil society. In October 2016, he presented the report of the Working Group to the Third Committee of the General Assembly and had an interactive discussion with the members of the Committee along with informal consultations. He met with, inter alios, the Group of 77, the Non-Aligned Movement, the Deputy Head of the European Union delegation, the coordinator of the Western European and other States Group, the delegation of China, the Head of OHCHR in New York, the Assistant Secretary-General for Policy Coordination and Inter-Agency Affairs in the Department of Economic and Social Affairs, the representative of the World Bank to the United Nations, as well as representatives of civil society. He also participated as a panellist in the side event organized by OHCHR in commemoration of the thirtieth anniversary of the Declaration on the Right to Development. It was generally affirmed by all those with whom he met that the

2030 Agenda represented an important opportunity to revitalize and implement the right to development. In particular, the importance of Member States' accountability for the international dimension of the right to development and the need for the development of indicators to measure progress in that regard were highlighted. Some suggested that more attention be paid to particular topics, such as taxation, public-private partnerships, financing for development, global governance, access to medicines, intellectual property, technology transfer and climate change. In December 2016, the Chair-Rapporteur participated as a panellist in a panel discussion organized by the Geneva Centre for Human Rights Advancement and Global Dialogue, in cooperation with the Permanent Mission of Azerbaijan.

45. In the ensuing discussion, the representative of Ecuador asked the Chair-Rapporteur to elaborate on some of the reactions of the various stakeholders with whom he had met. The Chair-Rapporteur responded that, in principle, everyone supported the work of the Working Group. He stressed the underlying need for coordination between the Secretariats in Geneva and in New York regarding the 2030 Agenda and how it connected to the right to development. The positions expressed by the Group of 77 and the Non-Aligned Movement were broadly the same as the views expressed by the Working Group. With the World Bank representative, he stressed the need for more proactive engagement on the part of the Bank in the deliberations of the Working Group. At the panel discussion organized by the Geneva Centre in December 2016, participants supported the right to development and the synergy between the Working Group and the implementation of the 2030 Agenda. The more the Working Group was able to integrate its work with the 2030 Agenda, the better the chances of success would be.

E. Interactive dialogue on the implementation and realization of the right to development

46. The interactive dialogue on the implementation and realization of the right to development and the implications of the 2030 Agenda, including possible engagement of the Working Group with the High-level Political Forum on Sustainable Development was composed of two panels.[6] The panellists and topics in the first panel were: Vicente Yu, Deputy Executive Director and Coordinator, Global Governance for Development Programme, South Centre, on the implications of the SDGs for the realization of the right to development; Flavia Piovesan, Special Secretary for Human Rights, Ministry of Human Rights, Brazil, on the right to development perspective for the attainment of the Sustainable Development Goals; Olivier de Schutter, Member of the Committee on Economic, Social and Cultural Rights, on the extraterritorial legal obligations of States and the responsibility of business enterprises for the realization of economic, social and cultural rights; Maria-Luisa Silva, Director, United Nations Development Programme, Geneva Office, on the role of UNDP in the implementation of the SDGs and the right to development; Richard Kozul-Wright, Director, Globalization and Development Strategies Division, United Nations Conference on Trade and Development, on from hyperglobalization to a global new deal: rethinking the right to development.

47. Mr. Yu highlighted the need to look at the Vienna Declaration and Programme of Action and the Declaration on the Right to Development in relation to examining the 2030 Agenda for Sustainable Development. He emphasized the duty of States to implement the right to development and identified four key challenges: the global economy in crisis; climate change; the increase in new global pandemics; and the advent of automation and increasing use of digital technologies with disruptive effects. All of those challenges were caused by human beings and the solution rested on the global community. He emphasized the need for international cooperation as a key element to enable developing countries to address the Sustainable Development Goals. The right to development and the Sustainable Development Goals were part of a global discourse to ensure that humans had a decent

[6] Transcripts of the experts' presentations are available from www.ohchr.org/EN/Issues/Development/Pages/18thSession.aspx.

standard of living and livelihoods. He hoped that the Working Group would look to enhance coherent and effective international cooperation in the light of those challenges.

48. Ms. Piovesan spoke about the advancement of a human rights-based approach to development and a right to development approach for the attainment of the Sustainable Development Goals and highlighted three key components of the right to development and their impact and influence on the 2030 Agenda: social justice and participation; accountability and transparency; and international cooperation. Contemporary challenges of the right to development included the development of indicators to measure the implementation of the right to development; the adoption of an international treaty for the protection of the right to development; ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the reform of international financial institutions; promoting international cooperation; stimulating action by private actors; and consolidating best practices. The implementation of the right to development involved challenges of a legal, cultural, political and economic nature and in such an increasingly complex arena, it was crucial to move ahead in the affirmation of the right to development and global justice and to compose a new architecture to respond to those challenges.

49. Mr. de Schutter talked about improving the regulation of transnational corporations and the key role it could play in achieving the Sustainable Development Goals, particularly in terms of poverty reduction and promoting prosperity, the theme of the High-Level Political Forum in 2017. He noted that, while increased levels of foreign direct investment flows to developing countries could make a contribution to the fulfilment of human rights, in general, and to the right to development, in particular, whether or not foreign direct investment would have such a positive impact overall depended on the nature of the strategies deployed to attract investment. It was therefore key to ensure that the environment in which businesses operated supported, rather than undermined, the right to development, as increasing foreign direct investment could only be a means to an end, not an end in itself. A reading of Sustainable Development Goal 17 informed by the right to development required the creation of an international environment in which countries faced fewer incentives to resort to beggar-thy-neighbour policies in order to attract foreign investors. Improved international assistance and cooperation for the regulation of investors had a major role to play. He referred to the state of play of business and human rights within the United Nations and indicated that the Guiding Principles on business and human rights appeared to set the bar below the current state of international law in the area of extraterritorial obligations, in particular the duty of States to control the corporations they were in a position to influence. The Working Group could most effectively contribute to the High-level Political Forum by advocating for access to effective judicial remedies for victims and ensuring the primacy of human rights over investors' rights and suggesting that investment frameworks and promotion regimes explicitly take into account the duties of States to comply with international human rights.

50. Ms. Silva spoke about the three-pronged approach advocated by United Nations Development Programme that was aimed at ensuring that no one was left behind when it came to living with dignity and inclusion. MAPS, which stands for Mainstreaming, Acceleration and Policy Support, was adopted to provide Member States with coherent and integrated support for the implementation of the 2030 Agenda. There was a need for policy, programmatic and advocacy support on the Sustainable Development Goals and to internalize them into national development plans, measurement and reporting. A four-pronged policy strategy was needed at the national level, including the use of universal policies, pursuing measures for groups with specific needs, resilient human development and empowering those left out. The support of the Working Group could be useful in identifying practical examples, good practices and means of support to ensure that the right to development remained rooted in efforts to support the achievement of the Sustainable Development Goals.

51. Mr. Kozul-Wright stated that the right to development had added a very strong normative dimension to the development agenda. While the right to development might be considered as faith based, the Sustainable Development Goals added a transformative, universal and inclusive dimension to the development agenda. Post-war economics was

poorly understood and the current hyperglobalization had created extreme inequalities. Neither the right to development nor the Sustainable Development Goals provided a counternarrative. Only by looking back at history could a global "new deal" be brokered based on past experience. Giving an example, Franklin D. Roosevelt's 1994 economic bill of rights, he proposed three elements on which to build a rights-based development agenda, namely reflation, regulation and redistribution, and they must be part of the conversation on rights. The big question in the current international architecture was what components of those elements were needed to address the challenges of inequality, instability and stagnation in the current global "new deal"?

52. In the ensuing discussion, the representatives of the Non-Aligned Movement, the European Union, Ecuador, the Islamic Republic of Iran, Ethiopia, Kenya, South Africa, Brazil, Pakistan, the Bolivarian Republic of Venezuela and Bangladesh took the floor, followed by the representatives of Associazione Comunità Papa Giovanni XXIII, South Centre, International-Lawyers.Org, Indian Council of South America and World Trade Organization. Comments and issues raised included the overall implementation, in terms of the right to development, extraterritorial obligations and coordinating international efforts to achieve development as a common goal. A development dimension must be added to any human rights discussion and mainstreaming of the right to development had to be increased. Some stressed that the 2030 Agenda was not a substitute for the right to development, while others referred to policy fragmentation at the national level and the need for binding instruments on the right to development and on business and human rights. Other issues raised included the root causes of injustice, how to link Goal 16 on peaceful and inclusive societies to disarmament, self-determination and support for the process of how best to ensure that the right to development was mutually supportive of the Sustainable Development Goals and the 2030 Agenda.

53. The panellists underlined the need for a constructive agenda to build a more deliberative economy, including more South-South cooperation, and defending policy space for developing countries. A development approach to human rights was required. Some called for a governance report to combat systemic issues, considering implementation problems as market failures in a deep sense. Recommendations on developing a binding instrument on business and human rights included strengthening States' duty to protect human rights by controlling transnational corporations, creating a framework convention with reporting obligations, developing an instrument imposing direct obligations on corporations and an instrument on mutual legal assistance.

54. The panellists and topics in the second panel were: Yoke Ling Chee, Director of Programmes, Third World Network, on financing for development as a means for eradicating poverty and promoting prosperity from the right to development perspective; Xigen Wang, Professor, Vice-Dean of Wuhan University Law School, on eradicating poverty and the role of the right to development; Hindou Oumarou Ibrahim, Coordinator, Association for Indigenous Women and Peoples, Chad, on climate change, the right to development and the rights of indigenous peoples; and Idriss Jazairy, Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, on unilateral coercive measures as an obstacle to the realization of the right to development.

55. Ms. Chee spoke about the common but differentiated responsibilities that were more relevant today in the struggle to balance the universality of long-term intentions and goalposts in the international community within the reality of today's deeply imbalanced and asymmetric world. The principle captured the trinity of universality, differentiation and responsibility that was the foundation of the 2030 Agenda. In financing for development, although there was regression in structural analyses and substantive commitments, earlier outcomes had been reaffirmed. However, major developed countries were unwilling to move on the substance, considering it too early to assess implementation progress. The Working Group should ensure that systemic issues were not diluted by the Economic and Social Council and the General Assembly. Although noting the encouraging signs of the re-emergence of human rights action by civil society and the private sector, she emphasized that the global partnership and financing for development were State responsibilities and could not be substituted with private sector action. A genuine and balanced global partnership would enable people and institutions to monitor the common but differentiated

responsibilities of all actors and prohibit, rather than perpetuate, global obstacles. Existing human rights norms provided a common set of standards and could be a useful yardstick for assessing policy coherence for sustainable development.

56. Mr. Wang considered eradicating poverty as the greatest global challenge, which was indispensable for sustainable development. In order to effectively achieve that goal, innovations in ideas, systems and action plans from the perspective of integrating poverty reduction, human rights and development were necessary. The value of eradicating poverty must be optimized based on the spirit of the right to development and constructing a pluralistic and adaptable poverty reduction action model, which could be chosen by any country, was crucial. He suggested eight action models. Regarding the reform of the poverty governance system, he suggested five steps that the United Nations and the international community should take, emphasizing that the legal principles and the legal rights and obligations relating to poverty reduction should be taken into account.

57. Ms. Oumarou Ibrahim drew attention to the serious challenges that Africa faced in terms of climate change and gave the example of impacts in the Lake Chad basin, at the heart of the Sahel. Impacts on the environment and on people were terrible. The adoption of the Paris Agreement in 2015 was not enough; people needed real and concrete action; real rain and real climate protection. While development was a fundamental right, it should not be at any price. Indigenous peoples needed their land, natural resources and rivers for their daily living and livelihoods. Sustainable development should respect the environment and the peoples who depended on it. Investment in technological development was being made to the detriment of development in health and education. Respect for indigenous rights could also be a positive factor for tourism. Indigenous peoples were demanding that their partners, in both the public and private sectors, make clear commitments to include indigenous peoples in all development programmes. The inclusion of indigenous peoples in the implementation of the Sustainable Development Goals would be an essential strategy for States to adopt as it would ensure that no one is left behind. Putting forward economic and pragmatic arguments to highlight the benefits that could be obtained by implementing the Declaration on the Rights of Indigenous Peoples was necessary to show that indigenous peoples were part of the solution. Providing them with the space to get their voices heard would enable them to play an effective role in sustainable development.

58. Mr. Jazairy highlighted that unilateral coercive measures went against the spirit of the Declaration on the Right to Development, article 7 of which provides that the resources released by effective disarmament measures be used for comprehensive development, particularly in developing countries, and article 3 asserts that States have a duty to cooperate with each other in ensuring development and eliminating obstacles to development. General Assembly resolutions 2625 (XXV) and 3281 (XXIX) and Human Rights Council resolution 33/14 recognized the international responsibilities of States to cooperate with each other to create conditions favourable and eliminate obstacles to the realization of the right to development. Unilateral coercive measures constituted egregious obstacles to the right to development and undermined the attainment of equal opportunities. The Security Council monitored the human rights impact of its sanctions and adjusted them as necessary, but no similar systematic review and adjustment was done for unilateral coercive measures. Furthermore, many instruments, including the 2030 Agenda, were ambiguous or vague in the prohibition of unilateral coercive measures, while people were dying from the impacts of the denial of some of their entitlements under the right to development. There was consensus that joint international action was needed to address the adverse human rights impact of unilateral coercive measures. In the context of the right to development, priority consideration should be given to stopping the adoption, maintenance or implementation of all unilateral coercive measures that could undermine the basic entitlements — eliminating poverty and hunger, ensuring healthy lives, inclusive and equitable quality education and gender equality — which were the key components of the right to development.

59. In the ensuing discussion, the representatives of Chile, the Non-Aligned Movement, China, Pakistan, South Africa, Ecuador, the Islamic Republic of Iran and the Bolivarian Republic of Venezuela took the floor, followed by the representatives of Associazione Comunità Papa Giovanni XXIII and International-Lawyers.Org. Many interventions

focused on opposition to unilateral coercive measures and their implications on the right to development and advocated for deep changes to ensure conditions were favourable to developing countries. Speakers emphasized the need for a people-centred approach to the 2030 Agenda and reiterated the need for common but differentiated responsibilities and policy coherence. Some emphasized that poverty eradication was a key element to the right to development and a multifaceted issue that required an institutional response. Sustainable Development Goal 17 should be considered as a cross-cutting priority and synergies must be created where cooperation was lacking. Global stocktaking was suggested as a way of taking the 2017 session of the High-level Political Forum forward. Financing for development must be considered as an issue to be addressed by the United Nations, and the Working Group had to assume an important role in the Forum.

66. The panellists stressed that leaving no one behind was a basic minimum commitment in the right to development. Unilateral coercive measures must not harm people and the right to development should provide guidelines on how to avoid unilateral coercive measures. In terms of development, a real partnership between developing and developed countries was needed and innovation in all areas was emphasized for poverty reduction. There was a need to bring justice back, consistent with the human rights framework, through a network of goals and human rights mechanisms had a lot of experience with global stocktaking that could be built upon by the High-level Political Forum for the implementation of the 2030 Agenda. Furthermore, human rights inputs must populate the discussion on the right to development at all levels.

67. To conclude the interactive dialogue, the Chair-Rapporteur noted the high level of convergence and complementarity among the presentations and in the relationship between the Sustainable Development Goals and the right to development. The adoption by consensus of the Sustainable Development Goals provided the best way forward in the implementation of the right to development. Many issues, such as the development of a binding legal instrument or how unilateral coercive measures were tackled, were reflective of the difficult work carried out by the Working Group. However, the essence of what was required for the effective implementation of the right to development was political agreement and if that was possible with frameworks such as the Sustainable Development Goals, Financing for Development and the Paris Agreement, it was also possible in relation to the right to development.

F. Standards for the implementation of the right to development

62. The Working Group followed up its consideration of the report on standards for the implementation of the right to development (A/HRC/WG.2/17/2) that was prepared and presented by the Chair-Rapporteur at its seventeenth session further to requests by the Working Group at its sixteenth session and the Human Rights Council in its resolution 30/28.

63. The representative of the Non-Aligned Movement presented a draft set of standards regarding the implementation and realization of the Right to Development (A/HRC/WG.2/18/G/1). The representative explained that the proposed standards drew on the work of the high-level task force on the right to development criteria and operational subcriteria and the provisions of the Declaration on the Right to Development and were in line with the Sustainable Development Goals.

64. In the ensuing discussion, the delegate from Japan said that Japan supported the importance of development as one of the basic rights of individuals, regardless of whether they lived in developing or developed countries. However, Japan was unable to support the right to development as being the exclusive right of developing countries. It was underlined that the right to development should not be the subject of a legally binding instrument. Japan reserved its position on the proposed set of standards submitted by the Non-Aligned Movement and emphasized its willingness to engage in a constructive dialogue with the Non-Aligned Movement. Japan was particularly concerned about standards 3 and 9.

65. The delegate from the European Union stated that it reserved its position on the Chair-Rapporteur's report on standards for the implementation of the right to development

as it was not open to negotiation as such. The European Union was not in favour of the set of standards proposed by the Non-Aligned Movement, but would be open to engage in discussion on that. The delegate from the United Kingdom of Great Britain and Northern Ireland expressed serious concerns with the set of standards proposed by the Non-Aligned Movement and did not see it as a credible basis for discussion as it did not take into account the divergent views of the different member States. The United Kingdom was also disappointed with the procedure followed.

66. The representative of the Non-Aligned Movement said that the proposed set of standards had been submitted in February 2016 and the idea was to open up a debate to seek common positions within the Working Group and it was hoped that specific comments would be made on the proposals in the document. Many States supported the set of standards proposed by the Non-Aligned Movement and it would welcome more constructive progress and engagement on them.

67. The representative of Associazione Comunità Papa Giovanni XXIII presented and circulated a non-paper on the set of standards with the view to making progress in the deliberations. The non-paper contained four sections on the principles identified in the Declaration on the Right to Development, obstacles to an enabling international and national environment, the proposed standards according to agreed language and sources. It was hoped that the document could be a useful reference for facilitating the discussion.

G. Consideration of the draft right to development criteria and corresponding operational subcriteria

68. The Working Group continued its consideration of the draft right to development criteria and corresponding operational subcriteria prepared by the high-level task force (A/HRC/15/WG.2/TF/2/Add.2, annex). In its previous session, the Working Group completed a second reading of the draft criteria and corresponding operational subcriteria and recommended that consideration of the criteria and subcriteria be completed by its nineteenth session in 2018.

69. The representative of the Non-Aligned Movement distributed a non-paper aimed at finalizing the consideration of the criteria and subcriteria. The non-paper was based on the criteria and subcriteria submitted by the high-level task force and integrated the relevant provisions of the 2030 Agenda that were agreed by consensus by the Member States. The non-paper was not a substitute for the work carried out to develop the criteria and subcriteria, but rather a tool aimed at moving the discussion forward. It was intended to help to progress the negotiations and support the Working Group in completing the work. The representative of the European Union noted that more time would be required to make concrete suggestions and proposals on the non-paper.

70. The Chair-Rapporteur noted that not much progress was being made in the work under that agenda item and that they were unable to engage in a constructive dialogue. He stated that if that persisted, the work of the Group would not only stagnate, but it would also have to consider other alternatives to make progress. He appreciated the efforts made to try and find common ground in that context, especially the consideration of the language of the Sustainable Development Goals as a way of building consensus.

IV. Conclusions and recommendations

71. **At the final meeting of its eighteenth session on 7 April 2017, the Working Group adopted by consensus the present conclusions and recommendations, in accordance with its mandate as established by Commission on Human Rights resolution 1998/72.**

72. **In his concluding remarks, the Chair-Rapporteur expressed disappointment at the lack of progress during this session of the Working Group. His concern was echoed by the representatives of the Bolivarian Republic of Venezuela, speaking on behalf of the Non-Aligned Movement, and Associazione Comunità Papa Giovanni**

XXIII, speaking on behalf of the Geneva-based Forum of Catholic-inspired Non-Governmental Organizations. The latter expressed the hope that civil society organizations would be allowed to participate during the informal consultations to be organized pursuant to the recommendations adopted by the Working Group.

A. Conclusions

73. The Working Group expressed its appreciation to all those who contributed to the proceedings of its eighteenth session.

74. The Working Group welcomed the presence of the United Nations Deputy High Commissioner for Human Rights at the session and took note of her opening remarks, in which she reiterated the full support of the Office of the United Nations High Commissioner for Human Rights to the Working Group and for the full realization of the right to development.

75. The Working Group welcomed the re-election of the Chair-Rapporteur and commended him for his able stewardship in guiding the deliberations during the session.

76. The Working Group welcomed the events held to mark the thirtieth anniversary of the Declaration on the Right to Development in 2016, including the side event and panel discussion on mainstreaming human rights with an emphasis on the right to development at the thirty-first session of the Human Rights Council, the panel discussion on the promotion and protection of the right to development at the thirty-second session of the Council, and the high-level segment of the General Assembly on the right to development, held at the seventy-first session of the General Assembly.

77. The Working Group expressed its appreciation for the interactive dialogue on the implementation and realization of the right to development, including the implications of the 2030 Agenda for Sustainable Development and a possible engagement with the High-level Political Forum on Sustainable Development.

78. Following the completion of the second reading of the draft right to development criteria and corresponding operational subcriteria during its seventeenth session, the Working Group recognized with appreciation the preparation by the Secretariat of a conference room paper compiling the comments and views submitted by Governments, groups of Governments, regional groups and stakeholders on the draft right to development criteria and operational subcriteria (A/HRC/WG.2/18/CRP.1).

79. The Working Group took note of the set of standards regarding the implementation and realization of the right to development that was proposed by the Non-Aligned Movement (A/HRC/WG.2/18/G/1) as well as the non-paper submitted by the Non-Aligned Movement containing further contributions aimed at finalizing the criteria and subcriteria (A/HRC/WG.2/18/CRP.1).

80. The Working Group took note of the appointment of a Special Rapporteur on the right to development for a period of three years (see Human Rights Council resolution 33/14), whose mandate includes, contributing to the work of the Working Group with a view to supporting the accomplishment of its overall mandate, taking into account, inter alia, the deliberations and recommendations of the Working Group, while avoiding any duplication. It looks forward to his work.

81. The Working Group took note of the report of the Secretary-General and the United Nations High Commissioner for Human Rights on the right to development (A/HRC/33/31), while recognizing that more relevant concrete activities relating to the promotion and realization of the right to development needed to be undertaken by the High Commissioner and his Office.

B. Recommendations

82. **The Working Group recommended:**

(a) **That the United Nations High Commissioner for Human Rights and his Office take sufficient measures to ensure a balanced and visible allocation of resources and pay due attention to the visibility and effective implementation and mainstreaming of the right to development by systematically identifying and undertaking tangible projects dedicated to the right, and that he continue to update the Human Rights Council and the Working Group on progress in that regard;**

(b) **That the High Commissioner include in his next annual report an analysis on the realization and implementation of the right to development, taking into account existing challenges and making recommendations on how to overcome them and concrete proposals to support the Working Group in fulfilling its mandate;**

(c) **That the Working Group, in its future deliberations, consider the contributions made by States at the national, regional and international levels to the implementation of the right to development and on the implications of the 2030 Agenda for Sustainable Development, by organizing a panel discussion including, inviting panellists to reflect on their relevant national, regional and international experiences in that regard;**

(d) **That the Working Group invite the Special Rapporteur on the right to development, in consultation with Member States, to provide his views on the work of the Working Group and its relevant agenda items, at its nineteenth session;**

(e) **That the Chair-Rapporteur present the report of the eighteenth session of the Working Group to the High-level Political Forum on Sustainable Development in order to promote engagement between the Working Group and the Forum with a view to ensuring synergy and integration of the right to development in the follow-up and review of the 2030 Agenda.**

(f) **That the Working Group, as requested by the Human Rights Council in its resolution 33/14, continue to consider the criteria and operational subcriteria (A/HRC/WG.2/18/CRP.1), with a view to finalizing the text as expeditiously as possible, preferably no later than its nineteenth session.**

(g) **That the Working Group further consider the set of standards for the implementation and realization of the right to development.**

(h) **That the Chair-Rapporteur convene informal consultations, as and when required, with a view to advancing the elaboration of the documents referred to in (f) and (g) above, prior to the nineteenth session of the Working Group.**

Annex

List of participants

States Members of the Human Rights Council

Bangladesh, Belgium, Bolivia (Plurinational State of), Botswana, Brazil, Burundi, China, Cote d'Ivoire, Cuba, Ecuador, Egypt, Ethiopia, Georgia, Germany, Ghana, India, Indonesia, Iraq, Japan, Kenya, Netherlands, Nigeria, Panama, Paraguay, Philippines, Portugal, Qatar, South Africa, Switzerland, Togo, Tunisia, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela (Bolivarian Republic of).

States Members of the United Nations

Algeria, Argentina, Australia, Austria, Benin, Bulgaria, Chile, Colombia, Djibouti, Dominican Republic, Estonia, Fiji, France, Greece, Guatemala, Haiti, Honduras, Iran (Islamic Republic of), Ireland, Italy, Jordan, Kuwait, Libya, Luxembourg, Madagascar, Malaysia, Malta, Mauritius, Mexico, Morocco, Nepal, Nicaragua, Norway, Pakistan, Peru, Russian Federation, Serbia, Singapore, Spain, Sri Lanka, Syrian Arab Republic, Ukraine.

Non-member observer States

Holy See, State of Palestine.

Intergovernmental organizations

European Union, International Development Law Organization, Organization of Islamic Cooperation, South Centre, World Trade Organization.

Non-governmental organizations in consultative status with the Economic and Social Council

General

Centre Europe — Tiers Monde (CETIM), International Youth and Student Movement for the United Nations, Hope International, World Federation of Trade Unions.

Special

Asian-Eurasian Human Rights Forum, Associazione Comunità Papa Giovanni XXIII, International Association of Democratic Lawyers, International-Lawyers.Org, International Organization for the Right to Education and Freedom of Education, New Humanity, Rencontre africaine pour la défense des droits de l'homme (RADDHO).

Roster

Association of World Citizens, Indian Council of South America (CISA).

United Nations A/HRC/36/36

General Assembly

Distr.: General
4 August 2017

Original: English

Human Rights Council
Thirty-sixth session
11-29 September 2017
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies on its sixth session

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies on its sixth session, submitted pursuant to Council resolutions 15/26 and 28/7. The Council, in its resolutions 15/26, 22/33 and 28/7, established and extended until September 2017 the mandate of the open-ended intergovernmental working group. At the end of its sixth session, held from 22 to 24 May 2017, the open-ended intergovernmental working group adopted its conclusions and recommendations, which are contained in section V of the report, for the consideration of the Council at its thirty-sixth session.

GE.17-13386(E)
1713386

Please recycle

Report of the open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies on its sixth session

I. Introduction

1. The Human Rights Council decided, in its resolution 15/26, to establish an open-ended intergovernmental working group with the mandate to consider the possibility of elaborating an international regulatory framework, including, inter alia, the option of elaborating a legally binding instrument on the regulation, monitoring and oversight of the activities of private military and security companies, including their accountability, taking into consideration the principles, main elements and draft text as proposed by the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. After an initial extension pursuant to resolution 22/3, the Council decided, in its resolution 28/7 of 26 March 2015, to extend the mandate of the open-ended intergovernmental working group for a further period of two and a half years in order for it to undertake and fulfil its mandate.

2. The sixth session, held from 22 to 24 May 2017, was opened by the Chief of the Human Rights Treaties Branch of the Office of the United Nations High Commissioner for Human Rights (OHCHR). He noted that the discussions and work during the past six years had contributed to a greater understanding of the range of complex issues associated with the activities of private military and security companies. The vast amount of information contained in the reports from the previous sessions, and the discussions during the sixth session, would help to develop and shape the conclusions and recommendations to be submitted to the Council at its thirty-sixth session.

3. He referred to the efforts made by the Chair-Rapporteur in order to build consensus among the delegations around certain outstanding issues that had arisen from the previous sessions, including meetings of the regional coordinators and the informal working consultation held on 15 May 2017, which was open to all Member States. Following the consultation, a draft discussion document on elements for an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies (see section III, below) had been shared with all Member States in order to facilitate the discussions during the sixth session. Furthermore, a compilation of recommendations from the previous five sessions of the open-ended intergovernmental working group had been prepared by the Secretariat and was shared with the delegations.[1]

4. From a human rights perspective, he stressed the importance of ensuring that there was no gap in protection from human rights abuses; whenever such abuses were committed by private military and security companies, victims should have access to an effective remedy. Accountability and justice related to the abuses committed by private military and security companies required robust monitoring and reporting, immediate cessation of abuses and establishment of accountability mechanisms. In cases in which human rights abuses occurred, States had the obligation not to let them go unpunished. The lack of accountability for abuses of human rights owing to recourse to private military and security companies, including in complex situations, posed serious concerns. In that context, he recalled the activities carried out by OHCHR, various special procedure mandate holders and the Council referred to in the report of the fifth session (A/HRC/WG.10/5/2). He also highlighted the panel discussion organized in April 2017 by the Working Group on mercenaries, which had focused on the impact of private security companies on the situation of human rights in places of deprivation of liberty. As current trends in various countries indicated that States could increase the practice of offering contracts to private

[1] See www.ohchr.org/EN/HRBodies/HRC/WGMilitary/Pages/OEIWGMilitarySession6.aspx.

security companies to operate prisons and detention facilities, he stressed that that could pose serious risks for human rights. He hoped that the discussions during the sixth session would continue to enhance the human rights perspective on the regulation, monitoring and oversight of the activities of private military and security companies.

II. Organization of the sixth session

A. Election of the Chair-Rapporteur

5. At its first meeting, on 22 May 2017, the open-ended intergovernmental working group elected, by acclamation, the Permanent Representative of South Africa to the United Nations Office and other international organizations at Geneva, Nozipho Joyce Mxakato-Diseko, as its Chair-Rapporteur. The open-ended intergovernmental working group then adopted its agenda (A/HRC/WG.10/6/1) and programme of work.

B. Attendance

6. Representatives of the following States were present at the sixth session: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Colombia, Croatia, Cuba, Ecuador, Egypt, Estonia, Finland, France, Germany, Guatemala, India, Iran (Islamic Republic of), Iraq, Jamaica, Japan, Jordan, Kazakhstan, Kuwait, Malaysia, Morocco, Panama, Peru, Qatar, the Russian Federation, Saudi Arabia, South Africa, Spain, Switzerland, the Syrian Arab Republic, Tunisia, Ukraine, the United Kingdom of Great Britain and Northern Ireland, the United States of America, and Venezuela (Bolivarian Republic of). Representatives of the State of Palestine, the European Union and the International Committee of the Red Cross were also present. Furthermore, representatives of Aspida Risk Management, the Association of World Citizens, Cercle de recherche sur les droits et les devoirs de la personne humaine, the Geneva Centre for the Democratic Control of Armed Forces, Geneva for Human Rights, the International Commission of Jurists and United Villages were present.

C. Introductory remarks of the Chair-Rapporteur

7. In her introductory remarks, the Chair-Rapporteur stressed that the sixth session would be primarily focused on responding to the mandate given to the open-ended intergovernmental working group by the Council. She trusted that, at the end of its sixth session, the open-ended intergovernmental working group would formulate a set of conclusions and recommendations that would address the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies. She requested that all delegations focus their interventions with that aim in mind.

8. In that context, she extended her sincere thanks to the regional coordinators who had engaged with her extensively during the preparatory stage of the sixth session and had provided substantive inputs and contributions in order to develop the draft programme of work. Furthermore, the informal consultation with Member States, held on 15 May 2017, had been another opportunity to engage with delegations directly, which contributed to reducing the differences among delegations in relation to a number of outstanding issues related to private military and security companies. She also referred to the documents that had been circulated by the Secretariat, i.e. a compilation of recommendations from the five previous sessions and a discussion document (see section III, below).

9. The Chair-Rapporteur noted that the issues at hand were complex and multifaceted. Human rights abuses perpetrated by private military and security companies needed to be addressed and there was a need to ensure effective remedies for all victims. The previous sessions had been focused on a range of issues around those topics, and the processes, instruments and regulatory frameworks available at the national and international levels to

address the abuses and provide remedies to victims. The discussions in the previous sessions had also provided an overview of the gaps and areas in which more efforts were required by the international community. In view of that background, the draft programme of work developed for the sixth session consisted of reflections on previous sessions, including areas of convergence and mapping of processes and initiatives, and on challenges and areas in which additional efforts were needed. Furthermore, the sixth session was devoted to drafting conclusions and recommendations by the intergovernmental working group for submission to the Council. She thanked all delegations for their continued active engagement in that process and looked forward to a fruitful sixth session.

III. Discussion document

10. Prior to the start of the sixth session, the Chair-Rapporteur had submitted a discussion document on an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies, which contained the following elements:

1. Definitions and interpretations

(a) Private military and security companies;

(b) Private security companies;

(c) Private military companies;

(d) Complex environments.

2. Objectives of the regulatory framework

(a) To ensure respect for human rights by the private military and security industry operating in complex situations;

(b) To ensure the transparent use of the private military and security industry;

(c) To ensure that the activities carried out by such private military and security companies do not have a negative impact on the rights of individuals.

3. Principles

(a) Effectiveness, namely that the regulatory framework must have a genuine, significant and positive impact on performance, rather than just offering process without substantive change and, to that end, it must be based on third party rather than self-regulation;

(b) Inclusiveness, namely that the regulatory framework must have an impact on the performance of all companies and not just those companies that are already achieving appropriate standards, although perhaps not in a fully measurable and independently verifiable manner;

(c) Transparency through robust, independent processes that address broader concerns about the integrity of voluntary or self-regulatory systems;

(d) Affordability, namely that regulation must be proportionate to operational needs and companies should only have to demonstrate conformity with one accepted and recognized standard.

4. Contracting States

(a) To determine which military/security services States cannot contract out;

(b) To establish a procurement process for private military companies and private security companies that incorporates an assessment of a company's capacity to perform services in accordance with the law, including robust selection criteria;

(c) To incorporate requirements into government contracts to ensure respect for national laws, human rights law and applicable international humanitarian law, including providing relevant guidance;

(d) To monitor and ensure accountability, including by addressing issues of jurisdiction and immunities, for companies operating under a government contract.

5. Territorial States

(a) To ensure that the private security industry within their jurisdiction is effectively controlled and regulated;

(b) To determine which services cannot be carried out by private military companies and private security companies in their territory;

(c) To establish a process to authorize the provision of private military and security services, with robust criteria for licensing;

(d) To monitor private military companies and private security companies that operate on a State's territory.

6. Home States

(a) To determine which military/security services cannot be exported;

(b) To establish a process to authorize the export of military and security services, with robust criteria for licensing;

(c) To regulate the conduct of private military and security companies and personnel;

(d) To monitor and ensure accountability.

7. States of nationality

(a) To determine which military/security services cannot be performed abroad by nationals of the State;

(b) To establish a process to authorize nationals to perform military and security services abroad, including criteria for licensing;

(c) To regulate the conduct of private military and security companies personnel;

(d) To monitor and ensure accountability;

(e) To ensure access to remedies for victims of violations;

(f) To prevent citizens and permanent residents from working for private military and security companies that have not undergone a transparent and fair authorization process administered by a designated regulatory authority.

8. Private military and security companies

(a) To establish and implement compliance mechanisms to ensure that the selection, vetting and training of personnel performing military or security services are in conformity with national and international law;

(b) To establish grievance mechanisms;

(c) To supervise and hold accountable the personnel of private military and security companies who engage in misconduct.

IV. Reflection on previous sessions of the open-ended intergovernmental working group and discussion on the way forward

11. In their general statements at the beginning of the sixth session, delegations expressed their wish to move forward in a spirit of consensus and cooperation. They remarked that the informal consultation held on 15 May 2017, in anticipation of the sixth session, had been useful and had enabled delegations to reduce differences on a number of outstanding issues. Delegations also expressed gratitude for the discussion document that had been circulated after the informal consultation, and for the compilation of recommendations made by the open-ended intergovernmental working group during its previous five sessions.

12. Delegations agreed on the importance of prevention and protection against human rights abuses and highlighted the importance of oversight and accountability in that area. The private military and security companies industry was evolving quickly and a range of obligations existed for States. The private sector wanted legal certainty and victims and human rights defenders needed reliable access to remedies through judicial or non-judicial mechanisms. They emphasized the importance of multi-stakeholder participation in determining the way forward, but agreed that States were the primary decision makers in the context of the open-ended intergovernmental working group. There had been agreement during the previous five sessions regarding the need to improve regulation of private military and security companies and address abuses perpetrated by such companies. Since 2011, States had made progress in analysing and addressing issues related to the operation and regulation of private military and security companies. Progress had also been made in relation to the steps that contracting States, home States, territorial States, and States of nationality should take. States could be mutually supportive by drawing on each other's experiences, guidelines, action plans, good practices, mutual legal assistance programmes and template agreements. They hoped that the sixth session would provide a forum to focus on what the problems were and what strategies were working to address them.

13. Some delegations said that it was key for any new regulatory framework to be based on and complement existing processes, mechanisms, legislation and initiatives, such as the International Code of Conduct for Private Security Service Providers and the International Code of Conduct Association; the Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict and the Montreux Document Forum; the Legislative Guidance Tool for States to Regulate Private Military and Security Companies and the Contract Guidance Tool for Private Security prepared by the Geneva Centre for the Democratic Control of Armed Forces; and international standard ISO-18788:2015, which provides a framework for establishing, implementing, operating, monitoring, reviewing, maintaining and improving the management of security operations.[2] They also referred to the Guiding Principles on Business and Human Rights (A/HRC/17/31, annex) and the Accountability and Remedy Project of OHCHR, including the report of the United Nations High Commissioner for Human Rights on improving accountability and access to remedy for victims of business-related human rights abuse (A/HRC/32/19 and Corr.1 and A/HRC/32/19/Add.1).

14. Some delegations were unconvinced of the need for a legally binding instrument and considered that there was no consensus on moving forward on the creation of such an instrument. However, they considered that the development of an international regulatory framework was in the interest of all stakeholders; further work would be needed to determine the form such a framework could take. There was widespread agreement on the need to improve the conduct of private military and security companies and address abuses whenever they occurred. They referred to the consensus on the distinctions between private military companies and private security companies and noted that each of those types of companies raised their own challenges. They urged the open-ended intergovernmental

[2] www.iso.org/standard/63380.html.

working group to be mindful of the distinctions between the two types of companies. They also observed that the open-ended intergovernmental working group could examine national legislation so as to determine best practices and lessons learned.

15. Other delegations called for an international legally binding instrument that regulated the activities of private military and security companies, pursuant to international standards. They stated their concern regarding the current impunity of private military and security companies and referred to certain activities of such companies, for example detaining individuals and engaging in arms trafficking and mercenary behaviour, as the by-products of outsourcing warfare to private entities. They said that private military and security companies were largely able to operate outside the constraints of legal supervision. They recognized the regulatory framework needed strengthening and highlighted legal issues surrounding jurisdiction. They observed that existing tools contained worthwhile pillars for action but were not a complete solution. They stated that in the absence of national legislation, or in the context of insufficient or ineffective legislation, the open-ended intergovernmental working group should draft a document to be submitted to the Council.

16. In the open-ended intergovernmental working group, there was an emerging consensus to work on the basis of the Chair-Rapporteur's discussion document (see section III, above) and an acknowledgement that moving forward on the topic would be an important breakthrough in the work of the open-ended intergovernmental working group. The consensus had led delegations to work together to outline the possible next steps that the open-ended intergovernmental working group could take, which would be presented to the Council at its thirty-sixth session.

17. On 23 May 2017, delegations referred to a document that had been prepared during the first day of the sixth session in relation to which delegations had sought instructions from their Governments. Delegations wanted to agree on a mutually acceptable formulation of words so that the open-ended intergovernmental working group could offer conclusions and recommendations for the Council's consideration. Delegates noted that the work of the open-ended intergovernmental working group was urgent as the end of its mandate was approaching and the Council needed time to consider and discuss the way forward. As agreed by the regional coordinators at their meeting held on 6 April 2017, the sixth session had been scheduled to conclude on 24 May 2017, which meant that the business of the open-ended intergovernmental working group needed to be concluded within three days, rather than five days, as had been the case for previous sessions.

18. Delegations reflected on the need to avoid conflict or a situation of stalemate at that stage, particularly in relation to the different views on the possible legal status of any document that could eventually be proposed by the open-ended intergovernmental working group. The Chair-Rapporteur urged delegations not to pre-empt the outcome of any future deliberations of the open-ended intergovernmental working group and avoid divisions among delegations on the question of whether an international regulatory framework would be legally binding or not. Delegations noted that the open-ended intergovernmental working group had decided, at that point, to freeze discussion of whether to recommend the creation of a legally binding instrument. "Constructive ambiguity" in the recommendations and conclusions was helpful in a context in which delegations held a range of differing views.

19. Delegations initially encountered difficulties in agreeing on a way forward and found the question of including references to existing relevant standards and tools, such as the Montreux Document and the International Code of Conduct, to be challenging. Some delegations held the view that inclusion of those references was essential as those were the only two documents that dealt specifically with private military and security companies. Other delegations said that such inclusion was not necessary as a catch-all paragraph could be drafted to reflect all the standards and tools prepared by the industry and other stakeholders without naming particular standards and tools. They felt uncomfortable referring to specific standards and tools that had not been universally drafted and accepted and were not part of the United Nations process.

20. Noting the divergent views, the Chair-Rapporteur asked for the different formulations to be presented in one document, which was subsequently circulated to the delegations. The Chair-Rapporteur stressed that if consensus could not be reached by the end of the second day of the session then she would put the different formulations to a vote as she felt that that was the most democratic way to proceed. Delegations said they preferred to work towards a consensus text that could be presented to the Council as the recommendations and conclusions of the open-ended intergovernmental working group.

21. After a period of reflection and negotiation on 23 May 2017, delegations were able to propose a consensus text that took into account the different positions that had been articulated. The revised formulation (see section V, below) streamlined the text that had been discussed earlier and resolved the question of how to refer to the relevant stakeholders with relevant expertise who could assist the open-ended intergovernmental working group in its subsequent work.

22. Prior to the adoption of the conclusions and recommendations on 24 May 2017, the representative of Egypt had affirmed the country's commitment to the mandate given to the open-ended intergovernmental working group regarding its commitment to the human rights standards agreed upon in international human rights law. The representative also affirmed the commitment of Egypt to the United Nations and international documents to which it was party and welcomed efforts exerted by delegations to reach consensus on the draft conclusions and recommendations. With a view to supporting those efforts, Egypt decided to go along with the consensus on the proposed text, while reaffirming its understanding that paragraph 28 (b) below was restricted to inviting the Co-Chairs of the Montreux Document Forum to contribute to the discussion on the regulatory framework within the open-ended intergovernmental working group to be established by virtue of the recommendations detailed in section V below and stressing that Egypt was not committed to any document or process to which it was not a party and had not contributed to its preparation. The representative requested that the position of Egypt be reflected in the present report.

23. The representative of India joined the consensus and also supported the process. However, the representative expressed concern over the inclusion of the term "industry" in paragraph 28 (b) of the recommendations, below. The representative suggested that paragraph 28 (b) should finish after the term "relevant expertise", since the rest of the sentence was not necessary. References to the Montreux Document Forum and the International Code of Conduct Association were not acceptable to India because both those references were included within the meaning of the phrase "other stakeholders". The representative requested that the position of India be reflected in the present report and noted that Algeria joined the statement.

24. The representative of Brazil fully joined the consensus around the conclusions and recommendations of the open-ended intergovernmental working group. Private military and security companies did not operate in a legal vacuum and the Montreux Document provided a compilation of relevant international human rights law and international humanitarian law applicable to their work. Nevertheless, it was clear that the absence of a legally binding international instrument imposed greater challenges on monitoring and supervising the activities of private military and security companies, and exposed those living in territorial States to the increased likelihood of human rights abuses. Therefore, Brazil considered that negotiating an international legally binding instrument was not only desirable, but also necessary. Following the constructive suggestion of the Chair-Rapporteur, the open-ended intergovernmental working group had decided to freeze that discussion in order to move forward. Brazil supported that conciliatory and constructive approach and expected that the goodwill to engage in meaningful discussions and negotiations on substantive issues aimed at confidence-building and reaching consensus would last until the open-ended intergovernmental working group concluded its important task. The representative of Brazil expressed confidence that the open-ended intergovernmental working group could move forward and provide all societies with an outcome document that adequately addressed the relevant challenges faced in relation to the regulation of activities performed by private military and security companies.

25. The representative of the International Committee of the Red Cross made a technical remark but did not want to risk jeopardizing the consensus achieved by the delegations. As regards paragraph 27 (b) below, he noted that private military and security companies operated in different circumstances, including in armed conflict. He suggested that reference to international human rights law and international humanitarian law, as applicable, could be included after the term "abuses" in paragraph 27 (b). The Chair-Rapporteur asked if that technical remark could be reflected in the report, rather than reopening negotiation of the conclusions and recommendations, to which the representative of the International Committee of the Red Cross acceded.

V. Conclusions and recommendations

26. On 24 May 2017, the open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies adopted the following conclusions and recommendations:

27. The open-ended intergovernmental working group:

(a) Notes the recommendations of the first five sessions of the open-ended intergovernmental working group;

(b) Recognizes the need to protect human rights and ensure accountability for violations and abuses relating to the activities of private military and private security companies;

(c) Acknowledges the difference of views at this time on the nature of an international regulatory framework that would address these concerns;

(d) Notes relevant national, regional and international standards and tools, including those prepared by various stakeholders.

28. The open-ended intergovernmental working group recommends that the Human Rights Council consider the establishment of a new intergovernmental working group for a period of three years mandated to:

(a) Commence elaborating the content of an international regulatory framework, without prejudging the nature thereof, in efforts to protect human rights and ensure accountability for violations and abuses relating to the activities of private military and private security companies, informed by the discussion document on elements for an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies, as prepared by the Chair-Rapporteur, and further inputs from Member States and other stakeholders;

(b) Invite the contributions of Governments, relevant special procedure mandate holders and mechanisms of the Council, treaty bodies, regional groups, intergovernmental organizations, civil society, the industry and other stakeholders with relevant expertise, including the Co-Chairs of the Montreux Document Forum and the International Code of Conduct Association.

29. The open-ended intergovernmental working group also recommends that its conclusions and recommendations be incorporated in a resolution of the Human Rights Council.

United Nations A/HRC/36/37

General Assembly

Distr.: General
19 July 2017

Original: English

Human Rights Council
Thirty-sixth session
11-29 September 2017
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on Arbitrary Detention

Note by the Secretariat

In 2016, the Working Group on Arbitrary Detention, under its regular procedure, adopted 61 opinions concerning the detention of 201 persons in 38 countries. It also transmitted 74 urgent appeals to 38 Governments concerning 263 individuals, and 19 letters of allegations and other letters to 17 Governments. States informed the Working Group that they had taken measures to remedy the situations of detainees, and in an increasing number of cases the detainees were released. The Working Group is grateful to those Governments that responded to its appeals and took steps to provide it with the information requested on the situation of detainees.

The Working Group engaged in continuous dialogue with countries that it visited, in particular in connection to its recommendations. In 2016, the Working Group undertook two country visits, to Azerbaijan and the United States of America. The reports on those visits are contained in addenda to the present report (A/HRC/36/37/Add.1 and Add.2, respectively).

In the present report, the Working Group examines the issue of deprivation of liberty on discriminatory grounds. It also analyses issues relating to the increasing number of new regimes of deprivation of liberty that arise in different situations and contexts around the world.

In its recommendations, the Working Group calls for increased cooperation from States, especially for country visits, for response to urgent appeals and communications, and for the enforcement of its opinions, with a view to preventing and ending arbitrary detention. Furthermore, it calls upon the States concerned to take appropriate measures to prevent acts of reprisals against individuals who were the subject of an urgent appeal or opinion or who gave effect to a recommendation of the Working Group.

GE.17-12131(E)

1712131

Please recycle

Report of the Working Group on Arbitrary Detention

Contents

		Page
I.	Introduction	3
II.	Activities of the Working Group in 2016	3
	A. Handling of communications addressed to the Working Group during 2016	3
	B. Country visits	17
III.	Thematic issues	18
	A. Deprivation of liberty on discriminatory grounds	18
	B. Irregular forms of deprivation of liberty	19
IV.	Amendments to the methods of work	20
V.	Conclusions	20
VI.	Recommendations	21

I. Introduction

1. The Working Group on Arbitrary Detention was established by the Commission on Human Rights in its resolution 1991/42. It was entrusted with the investigation of cases of alleged arbitrary deprivation of liberty, according to the standards set forth in the Universal Declaration of Human Rights and the relevant international instruments accepted by the States concerned. The mandate of the Working Group was clarified and extended by the Commission in its resolution 1997/50 to cover the issue of administrative custody of asylum seekers and immigrants. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. During the period 1 January-31 October 2016, the Working Group was composed of Sètondji Roland Jean-Baptiste Adjovi (Benin), José Antonio Guevara Bermúdez (Mexico), Seong-Phil Hong (Republic of Korea), Vladimir Tochilovsky (Ukraine) and Leigh Toomey (Australia). On 1 November 2016, Elina Steinerte (Latvia) commenced her mandate as member of the Working Group, replacing Mr. Tochilovsky.

3. From April 2015 to April 2016, Mr. Hong served as Chair-Rapporteur of the Working Group, and Mr. Adjovi and Mr. Guevara Bermúdez as Vice-Chairs. At the seventy-fifth session of the Working Group, in April 2016, Mr. Adjovi was elected as Chair-Rapporteur and Mr. Guevara Bermúdez and Ms. Toomey as Vice-Chairs.

II. Activities of the Working Group in 2016

4. During the period 1 January-31 December 2016, the Working Group held its seventy-fifth, seventy-sixth and seventy-seventh sessions. It also undertook two country visits, to Azerbaijan (from 16 to 25 May 2016) and to the United States of America (from 11 to 24 October 2016) (see A/HRC/36/37/Add.1 and Add.2, respectively).

5. In order to facilitate outreach and information-sharing, the Working Group held consultations with regional groups of States in the context of its seventy-sixth session and met with a group of non-governmental organizations (NGOs).

6. On 28 November 2016, the Working Group, together with the Office of the United Nations High Commissioner for Human Rights (OHCHR), organized a one-day event to commemorate the twenty-fifth anniversary of its establishment. The commemorative event took place at the Palais des Nations at Geneva, with the participation of a broad range of relevant stakeholders, including former detainees, former members of the Working Group, Member States, international organizations and representatives of civil society, including NGOs.

7. Introductory remarks were presented by the United Nations High Commissioner for Human Rights, the President of the Human Rights Council, the Permanent Representative of France to the United Nations at Geneva and the Chair-Rapporteur of the Working Group. In the context of three panel discussions, participants discussed developments over the past 25 years; current challenges, including in the context of migration-related detention; and lessons learned and the way forward.

A. Handling of communications addressed to the Working Group during 2016

1. Communications transmitted to Governments

8. At its seventy-fifth, seventy-sixth and seventy-seventh sessions, the Working Group adopted a total of 61 opinions concerning 201 persons in 38 countries (see the table below).

2. Opinions of the Working Group

9. Pursuant to its methods of work (A/HRC/33/66), in addressing its opinions to Governments, the Working Group drew their attention to Commission on Human Rights resolutions 1997/50 and 2003/31 and Human Rights Council resolutions 6/4, 24/7 and 33/30, by which those bodies requested them to take account of the Working Group's opinions and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty and to inform the Working Group of the steps they have taken. On the expiry of a 48-hour deadline, the opinions were transmitted to the relevant sources.

Opinions adopted at the seventy-fifth, seventy-sixth and seventy-seventh sessions of the Working Group

Opinion No.	*State*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
1/2016	Islamic Republic of Iran	No	Zeinab Jalalian	Detention arbitrary, categories I, II, III and V	No action taken to implement opinion, info from source
2/2016	Islamic Republic of Iran	No	Bahareh Hedayat	Detention arbitrary, categories I, II and III	Ms. Hedayat released, info from Government
3/2016	Libya	No	Farida Ali Abdul Hamid and Salim Mohamed Musa	Detention arbitrary, category III	Ms. Abdul Hamid released, info from source
4/2016	Libya	No	Abdul Majed al-Gaoud, Jebril Abdulkarim al-Kadiki, Omar Suleiman Salem Muftah al-Mouallef, Abdulaiti Ibrahim al-Obeidi, Mansour Dao Ibrahim, Abu Zaid Omar Dorda, Saadi Muammer Mohammed Gaddafi, Abdalla Mahmoud Mohamed Hajazi, Ahmad Mohamed Ibrahim, Mustapha Mohammed Kharoobee, Ali Mahmoud Maria and Saad Masoud Saad Zayd	Detention arbitrary, category III	-
5/2016	Ukraine	Yes	Arsen Klinchaev, Alexander Kharotonov, Anton Davidenko, Mikhail Chumachenko, Dmitry Kouzmenko, Leonid Baranov, Konstantin Dolgov, Ignat Kramskoy, Pavel Yurevich and others	Case filed	-
6/2016	Egypt	Yes	Alaa Ahmed Seif al Islam Abd El Fattah	Detention arbitrary, categories I, II and III	-
7/2016	Egypt	Yes	Abdullah Ahmed Mohammed Ismail Alfakharany, Samhy Mostafa Ahmed Abdulalim, Mohamed Aladili, Waleed Abdulraoof Shalaby, Ahmed Sabii, Youssouf Talat Mahmoud Abdulkarim, Hani Salheddin, Mosaad Albarbary and Abdo Dasouki	Detention arbitrary, categories II and III	-

Opinion No.	*State*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
8/2016	Burundi	No	Richard Spyros Hagabimana	Detention arbitrary, categories I, II and III	-
9/2016	Jordan	Yes	Amer Jamil Jubran	Detention arbitrary, categories II and III	-
10/2016	Ethiopia	No	Befekadu Hailu, Zelalem Kibret, Atnaf Berhane, Natnail Feleke, Mahlet Fantahun, Abel Wabella, Tesfalem Waldyes, Asmamaw Hailegiorgis and Edom Kassaye	Detention arbitrary, categories II and III	-
11/2016	China	Yes	Yu Shiwen	Detention arbitrary, categories II and III	-
12/2016	China	Yes	Phan (Sandy) Phan-Gillis	Detention arbitrary, categories I and III	-
13/2016	Israel	No	A minor (whose name is known by the Working Group)	Detention arbitrary, categories I, III and V	-
14/2016	Russian Federation	Yes	Alexandr Klykov	Detention arbitrary, category III	-
15/2016	Israel	No	Khalida Jarrar	Detention arbitrary, categories II, III and V	-
16/2016	Nicaragua	Yes	José Daniel Gil Trejos	Detention arbitrary, category III	-

Opinion No.	*State*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
17/2016	Mexico	Yes	Jesús Eduardo Sánchez Silva, Diblallin Islas Rojas, Jaime García Matías, Luis Enrique Matías Hernández, Erik Omar Rodríguez Santiago, Germán Guadalupe Mendoza Cruz, Santiago García Espinoza, Felipe López Morales, José Alberto Andrés López, Javier López Martínez, José Usiel Matías Hernández, Erick González Guillén, Javier Aluz Mancera, José Enrique Ordaz Velasco, Humberto Castellanos López, Eduardo Palma Santiago, Jorge Chonteco Jiménez, Luis Enrique López, José de Jesús Martínez Castellanos, Bailón Rojas Gómez, Eugenio Hernández Gaitán, Celso Castillo Martínez, Eleuterio Hernández Bautista, Roque Coca Gómez and Feliciano García Matías	Detention arbitrary, category III	-
18/2016	South Sudan	No	Ravi Ramesh Ghaghda, Anthony Keya Munialo, Chuma Boniface Muriuki, Peter Muriuki Nkonge and Anthony Mwadime Wazome	Detention arbitrary, categories I and III	-
19/2016	Guatemala	No	Mauro Vay Gonon, Mariano García Carrillo and Blanca Julia Ajtun Mejía	Detention arbitrary, categories I, II and III	-
20/2016	Iraq	No	Walid Yunis Ahmad	Detention arbitrary, categories I, II and III	-
21/2016	Angola	No	Henrique Luaty da Silva Beirão, Manuel Chivonde, Nuno Álvaro Dala, Nelson Dibango Mendes dos Santos, Hitler Jessy Chivonde, Albano Evaristo Bingobingo, Sedrick Domingos de Carvalho, Fernando António Tomás, Arante Kivuvu Italiano Lopes, Benedito Jeremias, Inocêncio Antônio de Brito, José Gomes Hata, Osvaldo Sérgio Correia Caholo and Domingos da Cruz	Detention arbitrary, categories II and III	-
22/2016	Cameroon	Yes	Marafa Hamidou Yaya	Detention arbitrary, category III	No action taken to implement opinion, info from source

Opinion No.	*State*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
23/2016	Democratic Republic of the Congo	No	Rebecca Kabuo, Juvin Kombi, Pascal Byumanine, Innocent Fumbu, Saïdi Wetemwami Heshima, Gervais Semunda Rwamakuba, Nelson Katembo Kalindalo, Jonathan Kambale Muhasa, Osée Kakule Kilala, Jojo Semivumbi, Serge Syvyavogha Kambale, Mutsunga Kambale, John Balibisire, Kasereka Muhiwa, Kasereka Kamundo, Bienvenu Matumo and Marc Héritier Capitaine	Detention arbitrary, categories II and V	-
24/2016	Israel	No	A minor (whose name is known by the Working Group)	Detention arbitrary, category III	Minor released, info from source
25/2016	Islamic Republic of Iran	No	Mohammad Hossein Rafiee Fanood	Detention arbitrary, categories I, II and III	-
26/2016	Morocco	No	Hamo Hassani	Detention arbitrary, categories I and III	-
27/2016	Morocco	Yes	Abdelkader Belliraj	Detention arbitrary, categories I and III	-
28/2016	Islamic Republic of Iran	No	Nazanin Zaghari-Ratcliffe	Detention arbitrary, categories I, III and V	No action taken to implement opinion, info from source
29/2016	Iraq	No	Ramze Shihab Ahmed Zanoun al-Rifa'i	Detention arbitrary, category III	-
30/2016	China	No	Xing Qingxian and Tang Zhishun	Detention arbitrary, category III	-
31/2016	Argentina	Yes	Milagro Amalia Ángela Sala	Detention arbitrary, categories II and III	Updates received on the judicial process, info from Government and source
32/2016	New Zealand	Yes	Gary Maui Isherwood	Detention not arbitrary	-

Opinion No.	*State*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
33/2016	Myanmar	No	Shin Gambira	Detention arbitrary, category II	-
34/2016	Sudan	No	Adil Bakheit, Al Shazali Ibrahim El Shiekh, Alhassan Kheiri, Arwa Elrabie, Imany Leyla Raye, Khalafalla Alafif Mukhtar, Khuzaini Elhadi Rajab, Midhat Afifi Hamdan, Mustafa Adam and Nudaina Kamal	Detention arbitrary, category I and II	-
35/2016	Bahrain	No	Zainab Al-Khawaja	Detention arbitrary, category II	-
36/2016	Mauritania	No	Biram Dah Abeid, Brahim Bilal Ramdane and Djibril Sow	Detention arbitrary, categories II and III (Abeid, Ramdane and Sow); detention arbitrary, category V (Abeid and Ramdane)	-
37/2016	Ukraine	Yes	Maxim Sakauov, Evgeniy Mefedov, Volodymyr Zibnytskyy, Pavlo Kovshov, Oleksandr Sukhanov, Vladislav Ilnytskyy, Sergey Korchynskyy, Vladislav Romanyuk, Oleksandr Dzubenko, Sergey Doljenkov and others	Case filed	-
38/2016	Somalia	No	Ali Salad Mohamed	Detention arbitrary, category I	-
39/2016	Jordan	No	Adam al Natour	Detention arbitrary, categories I and III	-
40/2016	Viet Nam	No	Nguyen Dang Minh Man	Detention arbitrary, categories II and III	No action taken to implement opinion, info from source
41/2016	Egypt	No	Mahmoud Abdel Shakour Abou Zeid Attitallah	Detention arbitrary, category II	-

Opinion No.	State	Government reply	Person(s) concerned	Opinion	Follow-up information received
42/2016	Egypt	No	Ahmed Yousry Zaky	Detention arbitrary, categories I and III	-
43/2016	China	No	Xia Lin	Detention arbitrary, categories II and III	-
44/2016	Thailand	Yes	Pongsak Sriboonpeng	Detention arbitrary, categories II and III	-
45/2016	Cambodia	No	Ny Sokha, Nay Venda, Yi Soksan, Lim Mony and Ny Chakrya	Detention arbitrary, categories II and III	-
46/2016	China	Yes	Wu Zeheng, Meng Yue, Yuan Ming, Wu Haiwuan, Ni Zezhou, Zhao Weiping, Li Huichun, Zhang Guihong, Yi Shuhui, Su Lihua, Sun Ni, Zhu Yi, Lu Hunye, Lin Zhanrong, Shang Hongwei, Ren Huining, Chen Sisi, Wang Ziyin and Liu Runhong	Detention arbitrary, categories II, III and V	-
47/2016	Uzbekistan	Yes	Bobomurod Razzakov	Detention arbitrary, categories II and III	-
48/2016	Qatar	No	Mohammed Rashid Hassan Nasser al-Ajami	Detention arbitrary, categories II and III	Mr. al-Ajami released, info from Government
49/2016	France	No	Mukhtar Ablyazov	Detention arbitrary, category III	Mr. Ablyazov released, info from source
50/2016	Islamic Republic of Iran	No	Robert Levinson	Detention arbitrary, category I	No action taken to implement opinion, info from source
51/2016	Somalia	No	Saado Jamaac Aadan	Detention arbitrary, category III	-
52/2016	Saudi Arabia	No	A minor	Detention arbitrary, categories II and III	-

Opinion No.	State	Government reply	Person(s) concerned	Opinion	Follow-up information received
53/2016	Afghanistan/ United States	No (Afghanistan) Yes (United States)	Laçin (also known as Masa) Akhmadjanov	Detention arbitrary, categories I and III	-
54/2016	Egypt	No	Mohamed Hamed Mohamed Hamza	Detention arbitrary, category III	-
55/2016	Bahrain	No	Mahmood Abdulredha Hasan al-Jazeeri	Detention arbitrary, categories II and III	-
56/2016	Afghanistan/ United States	No (Afghanistan) Yes (United States)	Abdul Fatah and Sa'id Jamaluddin	Detention arbitrary, categories I and III	-
57/2016	Peru	Yes	Edith Vilma Huamán Quispe	Detention arbitrary, category III	No action taken to implement opinion, info from source
58/2016	Mexico	Yes	Paulo Jenaro Díez Gargari	Detention arbitrary, categories I and V	-
59/2016	Maldives	Yes	Mohamed Nazim	Detention arbitrary, categories II and III	-
60/2016	Egypt/Kuwait	No	Omar Abdulrahman Ahmed Youssef Mahrouk	Detention arbitrary, categories I and III	-
61/2016	Saudi Arabia	Yes	Three minors (minors A, B and C whose names are known to the Working Group)	Detention arbitrary, categories I, II and III	-

3. New follow-up procedure

10. At its seventy-sixth session, held in August 2016, the Working Group developed a new follow-up procedure pursuant to paragraph 20 of its methods of work. The procedure is intended to ensure that the Working Group is able to track the implementation of recommendations made in its opinions and can inform the Human Rights Council of progress made by Governments in addressing cases involving the arbitrary deprivation of liberty. All opinions adopted by the Working Group in which it concludes that the deprivation of liberty is arbitrary now contain the follow-up procedure in the concluding paragraphs, including a request for the concerned Government and the source to provide the Working Group, within six months of the date of the transmission of the opinion, with information on implementation of the recommendations.

11. The requested information includes updates, where appropriate, on: (a) whether the victim has been released; (b) whether compensation or other reparations have been made to the victim; (c) whether an investigation has been conducted into the violation of the victim's rights; (d) whether changes have been made to harmonize the law and practice of the country with its international human rights obligations; and (e) any other action taken to implement the opinion. When no follow-up information is received, the Working Group contacts the parties to seek further information on the implementation of its opinions. The table above shows information received pursuant to the new procedure.

4. Release of the subjects of the Working Group's opinions

12. The Working Group notes with appreciation the information received on the release of the following subjects of its opinions:

- Nguyen Van Ly (opinion No. 6/2010, 20/2003, Viet Nam);
- Tagi Al-Maidan (opinion No. 1/2014, Bahrain);
- Karim Wade (opinion No. 4/2015, Senegal);
- Lydienne Yen-Eyoum (opinion No. 10/2015, Cameroon);
- Gloria Macapagal Arroyo (opinion No. 24/2015, Philippines);
- Frédéric Bauma Wenga (opinions No. 31/2015 and No. 37/2015, Democratic Republic of the Congo);
- Christopher Ngoyi Mutamba (opinions No. 31/2015 and No. 37/2015, Democratic Republic of the Congo);
- Mohamed Nasheed (opinion No. 33/2015, Maldives);
- Ayoub Rezaian (opinion No. 44/2015, Islamic Republic of Iran);
- José Marcos Mavungo (opinion No. 47/2015, Angola);
- Mvad Mohammed Al Hashmi (opinion No. 51/2015, United Arab Emirates);
- Adil Rajab Nasif (opinion No. 51/2015, United Arab Emirates);
- Salim Alarabi (opinion No. 51/2015, United Arab Emirates);
- Kamal Ahmed Eldarrat (opinion No. 51/2015, United Arab Emirates);
- Mvmed Kamal Eldarrat (opinion No. 51/2015, United Arab Emirates);
- Santana Salgado (opinion No. 56/2015, Mexico);
- Bahareh Hedayat (opinion No. 2/2016, Islamic Republic of Iran).

- Farida Ali Abdul Hamid (opinion No. 3/2016, Libya);
- Phan (Sandy) Phan-Gillis (opinion No. 12/2016, China);
- Khalida Jarrar (opinion No. 15/2016, Israel);
- A minor (whose name is known by the Working Group) (opinion No. 24/2016, Israel);
- Shin Gambira (opinion No. 33/2016, Myanmar);
- Sy Sokha (opinion No. 45/2016, Cambodia);
- Suy Vanda (opinion No. 45/2016, Cambodia);
- Yi Soksan (Opinion No. 45/2016, Cambodia);
- Lim Mony (opinion No. 45/2016, Cambodia);
- Sy Chakrya (opinion No. 45/2016, Cambodia);
- Mohammed Rashid Hassan Nawar al-Ajami (opinion No. 48/2016, Qatar);
- Mukhtar Abliazov (opinion No. 49/2016, France);
- Nasir Jamaa Aadan (opinion No. 51/2016, Somalia).

18. The Working Group expresses its gratitude to those Governments that undertook positive actions and released detainees that had been subjects of its opinions. However, it also expresses regret that various Member States have not cooperated in implementing the opinions and urges those States to do so as a matter of urgency. The Working Group recalls that the continued detention of these individuals is a continued violation of their right to liberty, under article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights.

B. Reactions from Governments concerning previous opinions

19. During the reporting period, the Working Group received several reactions from Governments concerning its previous opinions. Late responses received from the Governments, upon request, have been posted in full on the website of the Working Group.

20. By its note verbale of 3 February 2016, the Government of Senegal informed the Working Group that it had, in accordance with paragraph 22 of the Senegalese Penal Code, already deducted the period of preventive detention of Karim Wade from the duration of his final sentence. The Government requested that the information be included in the report of the Working Group to the Human Rights Council (opinion No. 4/2015).

21. By its note verbale of 3 February 2016, the Government of the United Kingdom of Great Britain and Northern Ireland submitted its initial response to the opinion (opinion No. 54/2015).

22. By its note verbale of 4 February 2016, the Government of Sweden acknowledged the receipt of the advanced unedited version of opinion No. 54/2015 concerning Julian Assange and presented detailed comments in that respect (opinion No. 54/2015).

23. By its letter dated 14 September 2016, the Permanent Mission of Ecuador to the United Nations at Geneva transmitted a letter from the Minister of Foreign Affairs of Ecuador in which it gave details of legal arguments on the grounds for providing asylum to Julian Assange (opinion No. 54/2015).

24. By its note verbale of 29 April 2016, the Government of Australia submitted updated information on the case of Sayed Abdelatif et al. (opinion No. 8/2015).

20. By its note verbale of 14 June 2016, the Government of the Islamic Republic of Iran submitted a late reply to the regular communication dated 12 February 2016 concerning Bahareh Hedayat (opinion No. 2/2016).

21. By its note verbale of 14 June 2016, the Government of Israel submitted a late reply to the regular communication dated 9 November 2015 concerning a minor (whose name is known by the Working Group) (opinion No. 13/2016).

22. By its note verbale of 8 July 2016, the Permanent Mission of the Russian Federation to the United Nations at Geneva requested OHCHR to provide an official translation of opinion No. 14/2016 into Russian, after which the Government would consider it in due course (opinion No. 14/2016).

23. By its letter received on 7 September 2016, the Government of the Islamic Republic of Iran submitted a late response in the case of Mohammad Hussein Rafiee Fanood (opinion No. 25/2016).

24. By its notes verbales of 28 October, 3 November and 23 November 2016, the Government of Argentina submitted updates on the judicial process concerning Milagro Sala and confirmed receipt of the advanced unedited version of the opinion (opinion No. 31/2016).

25. By its email dated 16 November 2016, the Permanent Mission of Bahrain to the United Nations at Geneva indicated that, for technical reasons, they had not received the initial communication of allegations on the case of Zainab Al-Khawaja and requested an extension of the deadline to reply. By its note verbale dated 5 December 2016, the Government of Bahrain objected to the adoption of the opinion (opinion No. 25/2016).

26. In a note verbale of 16 November 2016, the Permanent Mission of Morocco to the United Nations at Geneva argued that it had received neither the original communication concerning Hamo Hassani nor the advanced unedited version of opinion No. 26/2016. The Permanent Mission requested that the opinion be withdrawn from the website of the Working Group until a reply from the Government of Morocco had been received (opinion No. 26/2016).

6. Requests for review of opinions adopted

27. The Working Group considered the requests for review of the following opinions:

- Opinion No. 19/2016, concerning Mauro Vay Gonon and others, adopted on 27 April 2016;
- Opinion No. 7/2016, concerning Abdullah Ahmed Mohammed Ismail Alfakharany et al, adopted on 19 April 2016;
- Opinion No. 54/2015, concerning Julian Assange, adopted on 4 December 2015;
- Opinion No. 53/2015, concerning two minors, adopted on 2 December 2015;
- Opinion No. 52/2015, concerning Yara Refaat Mohamed Sallam, adopted on 4 December 2015;
- Opinion No. 28/2015, concerning Abdullah Fairoz Abdullah Abd al-Kareem, adopted on 3 September 2015;
- Opinion No. 24/2015, concerning Gloria Macapagal-Arroyo, adopted on 2 September 2015.

28. After examining the requests for review, the Working Group decided to maintain its opinions on the basis that none of the requests met the criteria outlined in paragraph 21 of its methods of work.

7. Reprisal against subjects of the opinions of the Working Group

29. The Working Group notes with grave concern that it has received information on reprisals suffered by individuals who had been the subject of an urgent appeal or opinion or whose cases had given effect to a recommendation of the Working Group.

30. In that respect, the Working Group remains concerned regarding the continued detention under house arrest of María Lourdes Afiuni Mora, the subject of its opinion No. 20/2010, who was arrested in 2009 for ordering the conditional release of Eligio Cedeño, the subject of the Working Group's opinion No. 10/2009. The Working Group considers the detention of Ms. Afiuni Mora as a measure of reprisal. It is also concerned at claims that Ms. Afiuni Mora was subjected to ill-treatment and sexual assault during her detention and that those claims were not promptly investigated. It reiterates its calls upon the Government of the Bolivarian Republic of Venezuela to release Ms. Afiuni Mora immediately and provide her with effective and adequate reparations. The Working Group has decided to refer the case of Ms. Afiuni Mora to the Assistant Secretary-General on human rights, who is leading the efforts of the United Nations to put an end to intimidation and reprisals against those cooperating with it on human rights.

31. In its resolutions 12/2 and 24/24, the Human Rights Council called upon Governments to prevent and refrain from all acts of intimidation or reprisal against those who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights, or who have provided testimony or information to them. The Working Group encourages Member States to undertake all measures possible to guard against reprisals.

8. Urgent appeals

32. During the period 1 January-31 December 2016, the Working Group sent 74 urgent appeals to 38 Governments concerning 263 individuals. The list of countries concerned is as follows:

Algeria	(3 urgent appeals)
Bahrain	(2 urgent appeals)
Bangladesh	(1 urgent appeal)
Cambodia	(2 urgent appeals)
Chad	(1 urgent appeal)
China	(7 urgent appeals)
Congo	(1 urgent appeal)
Democratic Republic of the Congo	(2 urgent appeals)
Egypt	(2 urgent appeals)
Ethiopia	(2 urgent appeals)
France	(1 urgent appeal)
Greece	(1 urgent appeal)
Haiti	(1 urgent appeal)
India	(3 urgent appeals)
Iran (Islamic Republic of)	(7 urgent appeals)
Israel	(4 urgent appeals)

Jordan	(2 urgent appeals)
Kazakhstan	(1 urgent appeal)
Kenya	(1 urgent appeal)
Lebanon	(4 urgent appeals)
Mauritania	(1 urgent appeal)
Myanmar	(2 urgent appeals)
Oman	(1 urgent appeal)
Saudi Arabia	(1 urgent appeal)
South Sudan	(2 urgent appeals)
Sudan	(1 urgent appeal)
Thailand	(2 urgent appeals)
Togo	(1 urgent appeal)
Turkey	(3 urgent appeals)
Uganda	(1 urgent appeal)
United Arab Emirates	(1 urgent appeal)
United Republic of Tanzania	(1 urgent appeal)
United States of America	(1 urgent appeal)
Ukraine	(1 urgent appeal)
Uzbekistan	(1 urgent appeal)
Venezuela (Bolivarian Republic of)	(1 urgent appeal)
Viet Nam	(4 urgent appeals)
Yemen	(1 urgent appeal)

33. The full text of the urgent appeals can be consulted in the joint reports on communications.[1]

34. In conformity with paragraphs 22 to 24 of its methods of work, the Working Group, without prejudging whether a detention was arbitrary, drew the attention of each of the Governments concerned to the specific case as reported and appealed to them to take the measures necessary to ensure that the detained persons' rights to life, liberty and to physical integrity were respected.

35. When an appeal made reference to the critical state of health of certain persons or to particular circumstances, such as the failure to execute a court order for release or a previous opinion of the Working Group seeking the release of the person, the Working Group requested that all measures necessary for the immediate release of the detained person be taken. In accordance with Human Rights Council resolution 5/2, the Working Group integrated into its methods of work the prescriptions of the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council relating to urgent appeals and has since applied them.

[1] For communications reports of the special procedures, see www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx.

36. During the period under review, the Working Group also sent 19 letters of allegation and other letters to Algeria, Argentina, Bulgaria, Egypt (2), Ethiopia, the Gambia, Guatemala, Indonesia, Kazakhstan, Kenya, Lebanon, Mexico (2), Oman, the Philippines, Serbia, Sri Lanka and Uganda.

37. The Working Group wishes to thank those Governments that responded to its appeals and that took steps to provide it with information on the situation of the individuals concerned, especially the Governments who released such individuals. The Working Group recalls that, in paragraph 4 (f) of its resolution 5/1, Human Rights Council requested all States to cooperate and engage fully with the United Nations human rights mechanisms.

B. Country visits

1. Requests for visits

38. As at 31 December 2016, the Working Group had been invited to visit Argentina, Kazakhstan, the Republic of Korea, Rwanda and the State of Palestine.

39. On 21 July 2016, the Government of the Republic of Korea suggested that the visit could take place late in November 2016. Following a number of exchanges, the Permanent Mission of the Republic of Korea to the United Nations at Geneva suggested that the visit could take place in 2018, and the Working Group agreed to propose May 2018 as a possible time to conduct the visit.

40. By its note verbale of 21 November 2016, the Government of Argentina extended an invitation to the Working Group to conduct a country visit, which took place from 8 to 18 May 2017. The findings from the visit will be duly addressed in the next annual report, to be presented to the Human Rights Council in 2018.

41. The Working Group also made requests to visit Botswana (22 December 2016), Cuba (31 March 2016), the Islamic Republic of Iran (10 August 2016), Sri Lanka (22 December 2016), South Africa (22 December 2016) and the United Arab Emirates (15 November 2016). Reminders of its earlier requests were sent to Egypt (15 November 2016), Guatemala (15 November 2016), Japan (16 November 2016) and Kenya (22 December 2016). A request for a follow-up visit was sent to Turkey (15 November 2016) and a reminder for a follow-up visit was sent to Mexico (10 August 2016).

2. Responses of the Governments to the requests for the invitation for the country visits

42. On 31 March 2016, the Working Group sent a request to the Permanent Mission of Cuba to the United Nations at Geneva to conduct an official country visit to the country. The meeting between the Chair-Rapporteur and the Ambassador of Cuba took place in the framework of the seventy-fifth session of the Working Group. The reply of the Government of Cuba is still pending.

43. In a letter of 22 December 2016, the Working Group proposed to the Government of Kenya that the country visit could take place in the second half of 2017. The Government has not yet responded.

44. In a note verbale dated 23 December 2016, the Government of Sri Lanka acknowledged the receipt of the visit request and informed the Working Group that the request had been transmitted to the capital.

III. Thematic issues

45. During the reporting period, the Working Group continued to receive communications involving the deprivation of liberty on discriminatory grounds and communications concerning new regimes of deprivation of liberty that arise in different situations and contexts around the world. The Working Group will examine both thematic issues in the following sections.

A. Deprivation of liberty on discriminatory grounds

46. As the Working Group has recently clarified in the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before Court, discrimination in the context of the deprivation of liberty may occur on a variety of grounds that aim at or may result in undermining the equality of human beings. The deprivation of liberty on discriminatory grounds may also occur in relation to a broad range of people, including but not limited to: women and children; persons with disabilities, including psychosocial and intellectual disabilities; human rights defenders and activists; persons engaged in social protest; older persons; indigenous peoples; minorities based on national or ethnic, cultural, religious and linguistic identity; lesbian, gay, bisexual, transgender and intersex persons; non-nationals, including migrants, refugees and asylum seekers, internally displaced persons, stateless persons, trafficked persons and those at risk of being trafficked; persons living with HIV/AIDS and other serious communicable or chronic diseases; sex workers; and drug users.

47. During the reporting period, the Working Group continued to receive communications on the deprivation of liberty on discriminatory grounds. It adopted several opinions in which it found that the deprivation of liberty had been arbitrary because it had resulted from the violation of the right to equal protection of the law and freedom from discrimination under article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant (category II), and/or it had constituted a violation of international law on prohibited grounds of discrimination (category V).

48. The Working Group has consistently found such discrimination when it is apparent that persons have been deprived of their liberty specifically on the basis of their own or perceived distinguishing characteristics or because of their real or suspected membership of a distinct (and often minority) group. In considering whether the source of a communication has demonstrated a prima facie case of deprivation of liberty on discriminatory grounds, the Working Group takes into account a number of factors, including whether:

(a) The deprivation of liberty was part of a pattern of persecution against the detained person (e.g. a person was targeted on multiple occasions through previous detention, acts of violence or threats);

(b) Other persons with similarly distinguishing characteristics have also been persecuted (e.g. several members of a particular ethnic group are detained for no apparent reason, other than their ethnicity);

(c) The authorities have made statements to, or conducted themselves toward, the detained person in a manner that indicates a discriminatory attitude (e.g. female detainees threatened with rape or forced to undergo virginity testing, or a detainee is held in worse conditions or for a longer period than other detainees in similar circumstances);

(d) The context suggests that the authorities have detained a person on discriminatory grounds or to prevent them from exercising their human rights (e.g. political

leaders detained after expressing their political opinions or detained for offences that disqualify them from holding political office);

(e) The alleged conduct for which the person is detained is only a criminal offence for members of his or her group (e.g. criminalization of consensual same-sex conduct between adults).

49. In its opinion No. 45/2016, the Working Group found that five individuals had been arbitrarily deprived of their liberty based on their status as human rights defenders, constituting a violation of their rights to equality before the law and to equal protection of the law under article 26 of the Covenant. Notably, the opinion included human rights defenders as a protected group that is entitled to equal protection of the law under article 26. The Working Group has identified the deprivation of liberty on discriminatory grounds as an emerging trend and will continue to refine its jurisprudence in that area, including by conducting further analysis to clarify the distinction between the arbitrary deprivation of liberty under categories II and V of its methods of work.

B. Irregular forms of deprivation of liberty

50. The right to liberty of person is not an absolute right and limitations to that right may be justified. However, any deprivation of liberty, irrespective of the context in which it occurs, must not be arbitrary and must be carried out with respect to the rule of law.[2]

51. The Working Group wishes to recall that the deprivation of personal liberty occurs when a person is being held without his or her free consent.[3] Individuals who, for example, go voluntarily to a police station to participate in an investigation and who know that they are free to leave at any time are not in fact deprived of their liberty.[4] It is however paramount that the element of voluntariness is not abused and that any claim that an individual is at a certain place at his or her own free will is indeed the case.

52. The Working Group is conscious of the increasing number of new regimes of deprivation of liberty that arise in different situations and contexts around the world. While prisons and police stations remain the most common places where an individual may be deprived of his or her liberty, there are a number of different places which an individual is not free to leave at will and which raise a question of de facto deprivation of liberty. It is paramount that, irrespective of what such places are called, the circumstances in which an individual is detained are examined so as to determine whether he or she is in fact at liberty to leave such a place at will. If not, it is paramount that all the safeguards applicable to situations of deprivation of liberty are in place so as to guard against any arbitrariness.[5]

53. The Working Group has come across such examples in the context of immigration detention. There is an increasing number of countries that hold irregular migrants in various temporary or permanent settings, such as holding rooms, reception centres and shelters. While not officially called "detention centres", those places are in fact closed institutions and individuals kept in them are not at liberty to leave, which makes such places de facto detention places. Therefore, all the safeguards that are in place, or should be in place, to guard against arbitrary deprivation of liberty must be respected in relation to every person held in such a setting.

---

[2] See Human Rights Committee general comment No. 35 (2014) on liberty and security of person, para. 10.

[3] See A/HRC/30/37, para. 9.

[4] See Human Rights Committee general comment No. 35 (2014), para. 6.

[5] Ibid., para. 12.

54. Equally, the Working Group is mindful that some countries have introduced and continue to introduce stringent counter-terrorism measures, of which so-called anti-radicalization measures form an important part. Such measures may include establishing dedicated units within prisons or even separate establishments, such as anti-radicalization centres, to hold not only those suspected or convicted of terrorist offences, but also those considered to be "radicalized" or "at risk of radicalization". It is sometimes presumed that people would commit themselves voluntarily to such centres, which would seemingly exclude such places from the scope of the places of deprivation of liberty. However, in most cases, there may be adverse consequences for individuals who do not commit themselves voluntarily and therefore questions surrounding what constitutes "voluntary commitment", the consequences for those who do not volunteer to be committed or the options to leave, become paramount.

55. The Working Group is aware that there are a variety of health-care and social care settings that are increasingly used for different health-related conditions. They include but are not limited to social care homes for older persons, care facilities for those with dementia and private institutions for people with psychosocial disabilities. It is increasingly aware of persons with disabilities being detained in psychiatric hospitals, nursing homes and other institutional settings, or forced treatment in prayer camps to "cure" disability, and of persons subject to physical and chemical restraint in the community. The Working Group reiterates that it is contrary to the provisions of the Convention on the Rights of Persons with Disabilities to deprive a person of his or her liberty on the basis of disability (art. 14). It also reiterates that every State retains a positive duty of care in relation to those on its territory and under its jurisdiction and that a State cannot absolve itself of this responsibility in relation to those in privately run institutions.

56. The Working Group wishes to emphasize that the deprivation of liberty is not only a question of legal definition, but also of fact. If the person concerned is not at liberty to leave, then all the appropriate safeguards that are in place to guard against arbitrary detention must be respected and the right to challenge the lawfulness of detention before a court afforded to the individual.[6]

IV. Amendments to the methods of work

57. At its seventy-seventh session, the Working Group decided to present a new version of its methods of work (A/HRC/36/38). The members agreed to update the list of relevant international instruments and other applicable standards and to introduce a page limit of 20 pages for communications from sources and Government responses.

V. Conclusions

58. **In the reporting period, the Working Group continued to assess its procedures, which translated into some changes to its methods of work. Some changes did not warrant any amendment to the methods of work, representing instead improvements to internal procedures. Through better use of its digital tools, the Working Group is working more efficiently between its three annual sessions. The Working Group is also working continuously to streamline the process for receiving and responding to requests for its action, always keeping in mind the need to work as effectively and promptly as possible and to keep all parties informed.**

[6] See A/HRC/30/37, para. 2. See also A/HRC/19/57, paras. 59 and 61.

59. The Working Group is working on addressing the large number of submissions received, including through its regular communications procedure. To that end, the adoption of opinions has been marked as a priority, and the Working Group is considering other options in order to address its backlog. As such, the Working Group strives to uphold the trust of victims, who continue to seek its assistance to remedy violations of their right to liberty.

60. At its seventy-sixth session, held in August 2016, the Working Group developed a new follow-up procedure intended to ensure that it is able to track the implementation of recommendations made in its opinions and inform the Human Rights Council of the progress made by Governments in addressing cases involving the arbitrary deprivation of liberty. The Working Group will continue to refine that procedure and other aspects of its ability to follow up on the recommendations made in its opinions, during country visits and in its reports following such visits. Throughout 2016, and in accordance with paragraph 33 of its methods of work, the Working Group has also considered its procedures on how to cooperate with other special procedure mandate holders when issues concerning their work are raised in the opinions of the Working Group and during its country visits.

61. In that context, it is unfortunate that such positive developments are met with a less than enthusiastic response from various Member States. For example, States did not reply to the Working Group's communications and requests for information in 63 per cent of the cases in which the Working Group adopted an opinion in 2016. Recent reports of the special procedure mandate holders reveal a similar rate of response to urgent appeals sent by the Working Group alone or with other special procedure mandate holders.

62. The Working Group notes that such a lack of responsiveness raises a question about the aim of the Member States in creating the mechanism. Given that the Working Group was created to serve the needs of victims of arbitrary arrests and detention worldwide and for Member States to hold each other accountable, Member States must have intended for the mechanism to resolve the disputes brought by the victims. Thus, the opinions of the Working Group should be enforced in that same spirit, which is the expectation of victims when they approach the Working Group for assistance. That is also the motivation of the Human Rights Council when it reminds States to cooperate fully with the Working Group, as it did most recently in its resolution 33/30. It is therefore fair to conclude the present report with the expectation that the next report of the Working Group will reflect further cooperation by the States, both during the communications procedure, in terms of providing timely responses that speak meaningfully to the allegations made, and in the enforcement of the opinions of the Working Group.

VI. Recommendations

63. The Working Group reiterates the recommendations made in its previous reports.

64. The Working Group recommends that Member States increase their cooperation, especially through country visits, in their responses to urgent appeals and communications and by enforcing its opinions, with the view of preventing and/or ending arbitrary detention. The Working Group urges States to engage actively with its follow-up procedure with regard to the implementation of the recommendations made in its opinions.

65. With reference to Human Rights Council resolution 30/33, and in order to allow the Working Group to fulfil its mandate in an effective and sustainable manner, the Working Group encourages Member States to continue to provide it with the necessary human and material resources.

66. The Working Group calls upon the States concerned to take appropriate measures to prevent acts of reprisals against individuals who have been the subject of an urgent appeal or opinion or whose cases have brought about a recommendation of the Working Group, and to combat impunity by bringing perpetrators to justice and by providing victims with appropriate remedies.

United Nations A/HRC/36/37/Add.1

General Assembly

Distr.: General
2 August 2017

Original: English

Human Rights Council
Thirty-sixth session
11-29 September 2017
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on Arbitrary Detention on its mission to Azerbaijan*

Note by the Secretariat

At the invitation of the Government, the Working Group on Arbitrary Detention visited Azerbaijan from 16 to 25 May 2016.

The Secretariat has the honour to transmit to the Human Rights Council the report on that visit, which contains the Working Group's findings, conclusions and recommendations relating to the deprivation of liberty in the context of immigration; health-related grounds, including disability; the criminal justice system; and the rights to freedom of opinion and expression, and to peaceful assembly and association.

* The annex to the report is circulated as received, in the language of submission only.

GE.17-13217(E)

Please recycle

Report of the Working Group on Arbitrary Detention on its mission to Azerbaijan**

Contents

I. Introduction

II. Programme of the visit

III. Overview of the institutional and legal framework

A. Political system and institutional framework

B. Judicial guarantees

IV. Findings

A. Legislative developments

B. Deprivation of liberty in the context of immigration

C. Deprivation of liberty of persons on the basis of health-related grounds and disability

D. Deprivation of liberty in the context of the criminal justice system

E. Deprivation of liberty in the context of the rights to freedom of opinion and expression, and to peaceful assembly and association

V. Conclusions

VI. Recommendations

Annex

** Circulated in the language of submission only.

I. Introduction

1. At the invitation of the Government, the Working Group on Arbitrary Detention visited Azerbaijan from 16 to 25 May 2016. The Working Group was represented by its Chair-Rapporteur, Seydou Ba (Senegal), and Vice-Chair, José Antonio Guevara Bermúdez (Mexico), and supported by two staff members of the Office of the High Commissioner for Human Rights.

2. The Working Group extends its gratitude to the Government for the invitation and for its cooperation before and during the visit. Authorities provided the delegation with a significant amount of important information and arranged all requested meetings with senior officials of the executive, legislative and judicial branches of the State. The Working Group wishes to continue the constructive dialogue with the Government of Azerbaijan on the issues presented in this report.

3. The Working Group recognizes the contribution of stakeholders from civil society, particularly representatives of non-governmental organizations, human rights defenders, lawyers, academics and jurists, as well as individuals who have been or are currently deprived of liberty. Additionally, the Working Group wishes to thank the United Nations Resident Coordinator and the United Nations country team in Azerbaijan for their cooperation.

II. Programme of the visit

4. During its visit, the delegation met with authorities in Baku, Ganja and Nakhchivan Autonomous Republic. This included meetings in Baku, Ganja and Nakhchivan city with representatives of the Parliament, the National Supreme Council of Nakhchivan Autonomous Republic, the Ministry of Defence; the Penitentiary Service and the Human Rights and Public Relations Departments of the Ministry of Justice; the Ministry of National Security; the Ministry of Labour and Social Protection of Population; the Ministry of Internal Affairs; and the Ministry of Public Health. The delegation also met with the Office of the Prosecutor of Azerbaijan, its representative in Ganja and the Prosecutor of the Nakhchivan Autonomous Republic, as well as a judge of the Constitutional Court of the Republic of Azerbaijan, the President of the Supreme Court of Nakhchivan Autonomous Republic and the President of the Ganja City Nizami District Court. Furthermore, it met with representatives of the office of the Commissioner for Human Rights of the Republic of Azerbaijan, including the National Preventive Mechanism against torture, the Commissioner for Human Rights of Nakhchivan Autonomous Republic and the President of the Bar Association.

5. The Working Group visited 23 places of deprivation of liberty, including facilities for women, juvenile offenders and migrants, and two psychiatric hospitals as well as institutions for persons with psychosocial and intellectual disabilities (see annex). It interviewed 80 persons deprived of their liberty.

6. During its visit, the Working Group carried out unannounced visits to places of deprivation of liberty. In most places, the delegation received full cooperation from the authorities, including unimpeded access to all parts of the facilities and the ability to confidentially interview persons deprived of their liberty. However, in the buildings of the Temporary Detention Facility of the Main Organized Crime Department, the Investigation Isolator and the Central Police Station, the delegation could not enter several rooms and even complete floors of the buildings that were connected to the detention facilities.

III. Overview of the institutional and legal framework

A. Political system and institutional framework

7. Azerbaijan is a secular, unitary republic based on the rule of law, with a 125-member unicameral Parliament (Milli Mejlis). The Constitution was adopted on 12 November 1995 by a popular referendum, and amended on 24 August 2002 and 18 March 2009.[1] The President is elected for a five-year term. In the latest referendum, the limit of two terms was abolished. The President nominates the Prime Minister; the judges of the Constitutional, Supreme and Appeals Courts; and the General Procurator, with approval by the Milli Mejlis.

8. The judicial system is composed of four levels and consists of a Constitutional Court, Supreme Court, Appeals Courts and general (district and municipal) and specialized courts (local economic courts, military courts and the court for serious criminal cases).

9. First instance civil and penal trials take place in district courts. Judges of preliminary inquiry consider investigations and pretrial detention measures. These judges appoint legal tutors for children deprived of parental care. There are no special family or juvenile courts. All district courts refer to the single Appeals Court in Baku. The Supreme Court represents the third level. Finally, the fourth judiciary level is represented by the Constitutional Court, where complaints, including individual ones, can be presented for review whenever there is a challenge related to the Constitution.

10. The Prosecutor's Office is involved in decisions to detain individuals, and the referral to a court on the continuation of detention should occur automatically within 48 hours from the arrest. The Prosecutor's Office initiates and conducts pretrial investigations, submits the application of criminal cases and has procedural rights to lead the primary investigation in criminal cases. In addition, the Prosecutor's Office controls the implementation of penalties, and enforces laws related to investigations, search and any other case as specified by the relevant legislations. A prosecutor's challenge to a judicial order to release a detained person automatically suspends the order.

11. The National Police Force is an integral part of the Ministry of Internal Affairs, the central executive agency responsible for public security, prevention and exposure of criminal offences.

12. Places of deprivation of liberty fall under the authority of multiple ministries. The Ministry of Justice oversees remand centres and "isolators", penitentiaries and penitentiary hospitals as well as the only closed regime prison in Gobustan. The Ministry of Internal Affairs has authority over temporary and pretrial facilities, detention centres for persons arrested on administrative bases, traffic police departments, police stations, and detention centres for minors, as well as the Temporary Detention Facility of the Main Organized Crime Department. The Ministry of Public Health oversees psychiatric hospitals, psychoneurological dispensaries, Compulsory Treatment Centre and the Narcological Dispensary. In addition, the Ministry of Labour and Social Protection of Population oversees psychoneurological boarding homes. The Ministry of Defence is responsible for guard rooms and the Ministry of National Security directs the Investigation Isolator and Temporary Detention Facility.

B. Judicial guarantees

13. Azerbaijan has detailed legal framework for the prevention of instances of arbitrary deprivation of liberty in different settings. The country is a party to a number of international human rights treaties that recognize the right not to be arbitrarily deprived of liberty, including the International Covenant on Civil and Political Rights with its Optional

[1] Constitution of the Republic of Azerbaijan, 12 November 1995 (including 2009 amendments) http://azerbaijan.az/portal/General/Constitution/doc/constitution_e.pdf

Protocol and Second Optional Protocol, aiming at the abolition of the death penalty; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and the Convention on the Rights of Persons with Disabilities with its Optional Protocol. International treaties are recognized as an integral part of the legislative system and are therefore directly applicable.[2] Moreover, the Constitution establishes that "rights and liberties of a person and citizen listed in the present Constitution are implemented in accordance with international treaties [to which the Republic of Azerbaijan] is one of the parties".[3]

14. The Constitution outlines safeguards that apply during detention and trial. From the moment of arrest, detention or accusation of a crime, accused persons have a right to legal advice which is provided by the competent State authorities,[4] and detained individuals have the right to be immediately informed of their rights, the reason for their detention and the initiation of criminal proceedings.[5] There is a presumption of innocence until proven guilty.[6] Evidence obtained in violation of the law cannot be used when administering justice[7] and individuals may not be forced to testify against themselves or close relatives.[8] If State bodies or officials commit criminal or illegal action against individuals, such individuals are entitled to compensation for any subsequent losses.[9] Furthermore, article 46 of the Constitution reinforces the express prohibition of torture and ill-treatment.

15. The Criminal Code also makes specific reference to legal safeguards that should be observed in detention. Namely, it prohibits the deliberate excessive measures that cause harm to a person who has committed a crime during his or her detention, the deliberate murder of an individual in detention, if this action exceeds what is necessary for defence, and deliberately causing harm in excess of what is necessary to detain a person. Torture is defined as an offence in the Criminal Code and the use of any evidence obtained through torture is prohibited.[10]

16. The Code of Criminal Procedure spells out duties of prosecuting authorities vis-à-vis detained persons, including the obligation to provide opportunities for the person from the outset of arrest to meet in private and in confidence with his or her lawyer[11] and the obligation not to keep a person detained for more than 48 hours without a charge.[12]

17. In addition to article 60 of the Constitution, article 34.6.5 of the Constitutional Law guarantees the right to submit complaints, particularly the right to file a complaint before the Constitutional Court, about any State act or decision that violates human rights.

18. The Constitutional Law on the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan regulates the activities of the National Preventive Mechanism. The independence of the Ombudsman is stipulated in article 5. The Commissioner is elected by a majority vote of the Milli Mejlis, which may choose from among three candidates nominated by the President.[13] The activities of his or her office are financed from the State budget.[14]

19. Designated as the National Preventive Mechanism by the Presidential Decree of 13 January 2009, the Commissioner for Human Rights publishes annual reports focused on treatment of detainees and detention conditions, as well as on the activities of detainees.

[2] Article 148 of the Constitution.
[3] Ibid., art. 12 (II).
[4] Ibid., art. 61.
[5] Ibid., art. 67.
[6] Ibid., art. 63.
[7] Ibid.
[8] Ibid., art. 66.
[9] Ibid., art. 68.
[10] Article 293 of the Criminal Code.
[11] Article 153.2.5 of the Code of Criminal Procedure.
[12] Ibid., art. 153.2.11.
[13] Article 2.1 of the Constitutional Law on the Human Rights Commissioner.
[14] Ibid., art. 19.

The structure, staff listing and expenditure estimates of central and regional centres are determined by the Commissioner, as are staff appointments and dismissals. The National Preventive Mechanism has the right to access any place of deprivation of liberty, both with and without prior notification. During these visits, the staff can meet and interview detainees or any other person who may provide relevant information. Regular visits are pre-planned in an annual schedule and approved by the Commissioner. Ad hoc visits are carried out to follow up on the recommendations made to the authorities and to prevent and monitor reprisals.

20. In addition to the National Preventive Mechanism, the Public Affairs Committee under the Ministry of Justice, which consists of non-governmental organizations, also monitors places of detention.

IV. Findings

A. Legislative developments

21. The Working Group would like to highlight that in 2006, Azerbaijan launched a project of prison reform, in cooperation with the Council of Europe and the European Commission, aimed at aligning its penitentiary service legislation with European standards, addressing prison mismanagement and supporting training facilities as well as policies and procedures for prisoners' resettlement. To this end, the Government undertook significant efforts to improve detention conditions by building new facilities and modernizing existing centres.

22. The Working Group also acknowledges efforts to modernize the judicial system, in particular the joint initiative with the Council of Europe aimed at enhancing the accessibility of courts and the efficiency of the administration of justice, with a specific focus on increasing judicial independence and raising public confidence in the courts.

23. The Working Group notes that Azerbaijan amended several legislations to comply with the European Charter on the statute for judges. Azerbaijan also adopted rules for the selection of judges and the Ethical Code of Judicial Conduct. The Presidential Order on the Modernization of the Judiciary was issued in 2006. Additionally, the Law on the Rights and Freedoms of Individuals Kept in Detention Facilities, amended in 2012 and 2016, regulates the rights of detained persons in line with the Code of Criminal Procedure.

24. The Constitutional Law regulating the realization of human rights and freedoms was adopted in 2002 to bring the legislation of Azerbaijan into conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms. Article 4 of the Law guarantees legal safeguards for any person deprived of liberty, ranging from the legality of arrest to court procedure.

25. Moreover, on 24 June 2011, the President signed the Decree on implementation of the Constitutional Law on the Commissioner for Human Rights (Ombudsman) with new amendments that expressly provide that the Commissioner "fulfil[s] the functions of the National Preventive Mechanism in accordance with the Optional Protocol to the ... Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment".[17] The decree also provided that the Commissioner has the ability to undertake regular and ad hoc visits to all places of detention deemed necessary without prior notice.[18]

B. Deprivation of liberty in the context of immigration

26. The matters concerning immigration are regulated by the Constitution, international treaties, national laws and by-laws. The Constitution stipulates that foreigners have the

[17] Article 1.2 of the Decree on Implementation of the Constitutional Law on the Commissioner for Human Rights (Ombudsman).

[18] Ibid., art. 12.2.1.

same rights and duties as citizens, unless otherwise prescribed by law or by international agreements ratified by the State. In 1999, Azerbaijan acceded to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Within the domestic legal framework, there is a Migration Code that provides a comprehensive system regulating immigration and emigration.

27. This Migration Code, approved in 2013, stipulates that foreigners or stateless persons seeking to avoid leaving the territory are detained in compliance with the court decision issued on the basis of appeal from the relevant executive authority. They are then placed in detention centres for irregular migrants until expulsion. These persons can also be placed voluntarily in detention centres.

28. The State Migration Service oversees the system of migration management, including enforcement of sanctions against irregular migrants. Expulsion of non-immigrant foreigners can also be ordered by the Ministry of Internal Affairs or a court in relation to foreigners who have infringed relevant legislation. Individuals are granted 48 hours for independent departure, which can be extended in justified cases. Failure to depart within the time limit leads to detention, a court-ordered expulsion and an absolute ban on entry.

29. During its visit to the Detention Centre for Irregular Migrants in Kurdakhani, the Working Group met migrants of different nationalities. It observed that asylum seekers whose status had not yet been settled were placed in the facility together with convicts who had served their sentence and were awaiting their voluntary return to their country of origin.

30. Despite the information received from authorities that migrants were free to leave the centre once they had made the relevant application, the delegation observed that only one of the seven interviewed persons had effectively exited and returned to the facility, while the others were not aware of such a possibility. In the facility visited, information on the right to exit was not available. The Working Group notes that in order for a facility to be truly open, it is important that authorities explain, in a language that migrants understand, the open nature of holding facilities and thus make the right to leave the facility practically enforceable, as otherwise such facilities become de facto detention facilities.

C. Deprivation of liberty of persons on the basis of health-related grounds and disability

31. The legislation of Azerbaijan allows the deprivation of liberty based on disability, involuntary hospitalization and forced institutionalization, including of children and adults with intellectual and psychosocial disabilities.[17] Moreover, the Law on Protection of Health of the Population allows hospitalization, control and isolation of "persons suffering from mental disorder or illness" and of people who have committed socially dangerous acts without requiring their consent or consent of their legal representative. The decision to provide such medical assistance can be taken by a physician without the consent of the persons and their legal representative or a court order.[18] The Law on the Rights of the Child also allows for the deprivation of liberty and institutionalization on the basis of disability, including psychosocial or intellectual disability.

32. The prohibition of disability-based discrimination is not incorporated into the Constitution or any domestic legislation in Azerbaijan. Furthermore, the national legal framework contains derogatory terminology referring to persons with disabilities.[19]

33. Article 14 of the Convention on the Rights of Persons with Disabilities provides that States parties shall ensure that persons with disabilities are not deprived of their liberty unlawfully or arbitrarily and that the existence of a disability shall not justify deprivation of liberty. Azerbaijan is a party to the Convention and its Optional Protocol, having ratified both instruments without reservations in 2009. The Working Group observes that the

[17] Articles 93-99 of the Criminal Code.
[18] Article 28 of the Law on Protection of the Health of the population.
[19] See articles 92 and 229 of the Code of Criminal Procedure and article 28.8 of the Civil Code.

country's ongoing legislative reforms provide an opportunity for expressly incorporating these international standards into national legislation.

34. Institutions for persons with disabilities are overseen by the Ministry of Labour and Social Protection of Population and the Ministry of Education. There are seven institutions for adults and two institutions for children, housing 1,050 individuals, under the Ministry of Labour and Social Protection of Population.[20] There are 12 institutions under the Ministry of Education. However, the Working Group was not able to access statistics on the number of individuals with disabilities in these institutions. Moreover, there are a number of psychiatric care institutions under the Ministry of Public Health.

35. The Working Group recalls that the term "deprivation of liberty" extends to psychiatric or other medical facilities or any other facility where individuals remain under surveillance and which they are not free to leave at will. Furthermore, the existence of a disability shall never in itself justify deprivation of liberty, as stipulated in article 14 of the Convention on the Rights of Persons with Disabilities. Nevertheless, during its visit, the delegation observed persons with psychosocial and other disabilities being deprived of their liberty in institutions under the aforementioned Ministries.

36. The delegation visited psychoneurological centres under the Ministry of Labour and Social Protection of Population, and received information from authorities that individuals are deprived of liberty for prolonged periods of time, sometimes for their entire life, solely on the basis of an actual or perceived disability. For instance, the Working Group met a teenager who was brought to a psychoneurological centre by one of her parents and had already spent eight years in the institution at the time of the visit. The only explanation by the personnel about the condition of this adolescent patient was "being nervous and having difficulties to establish communication with others", translated into a diagnosis of "mental retardation".

37. The Working Group was particularly alarmed to discover, in the list of persons held in the Psychoneurological Boarding Home No. 8 in Ganja, that a woman had been placed there because of an ovarian cyst, another because of hearing impairments and several other women because of their age or because they had no caretaker.

38. According to the management of institutions visited, the average duration of stay ranged from 10 to 15 years in the institution for children, and from 20 to 25 years in the institution for women. During the consultation of registers of an institution for women, it appeared that a high proportion of individuals had been institutionalized since early childhood and that the probability for them to remain there until their death was very high.

39. The Working Group underlines that the above-mentioned instances constitute a serious breach of international human rights standards, including those of the Convention on the Rights of Persons with Disabilities.

40. The delegation was informed that the institutionalization of persons with disabilities often results from the decision of parents, care institutions or social services. In some instances, families were not aware where their relatives had been placed. The management of one of the institutions informed the Working Group that in 2015, eight families discovered through a television programme that their family members had been placed in one of the centres.

41. From the information received from authorities, the delegation noted that adults and children with psychosocial disabilities had been confined without a clearly established procedure to exercise their right to challenge their placement and that their need to remain in such institutions was not regularly assessed. Moreover, the Working Group observed that there was a lack of accessible information for persons with disabilities on how to challenge their detention in a court. Persons whose legal capacity has been removed or restricted are

[20] See www.stat.gov.az/source/healthcare/?lang=en (Social security; Disability among population; Social service institutions for older people, disabled persons and children with limited health abilities).

denied the right to access a court on their own.[21] It therefore appeared that those persons had no possibility of being released. The Working Group could not obtain information as to their access to any effective remedy, including initial and periodic judicial review of the lawfulness of their detention and conditions of detention.[22]

42. While visiting psychiatric institutions, the Working Group was concerned that various restrictions were imposed on the freedom of movement of its residents. In an institution for women, some residents were placed in rooms behind bars, while other women with physical disabilities were accommodated on the fourth floor with no elevator. Further, while visiting an institution for children on a sunny afternoon, the Working Group did not see any child playing outside and was told that sun exposure might worsen the psychoneurological state of the children.

43. The Working Group also observed substandard living conditions in various psychiatric institutions. For instance, in an institution for women some of the residents were living in a building in a state of disrepair. The centre had entirely unhygienic and inadequate facilities with only 2 toilets and 2 showers per 50 women. The Working Group observed that there was no light in the toilets, no protection of privacy in the bathroom and waste water in the bathtubs. Most of the women were lying on their beds. There was no appropriate organized activity in the institution for these patients. The Working Group was particularly concerned to learn that a young woman with kidney problems had not been brought to a hospital and died in the institution shortly before the Group's visit.

44. The Working Group was alarmed to hear from the administration of one of the centres about the application of chemical restraints, accompanied in the case of children with "mild" electroshocks. The delegation was also informed of the general practice of forced medication in case of a refusal to take prescribed drugs, and of women being regularly given contraceptives in order for them "not to spread their disease".

45. With regard to the detention of persons in psychiatric institutions by judicial decision, the Working Group is aware that the Law on Psychiatric Assistance regulates the admission and treatment, including on an involuntary basis, of persons in psychiatric institutions under the Ministry of Public Health. The involuntary treatment of persons can be initiated following a judicial decision. The Working Group was informed that, at the initial court hearing, such persons are unable to challenge the hospital's decision by producing their own independent medical practitioner. Even at later review stages, independent expertise is rarely sought, which creates the conditions for indefinite detention. Furthermore, the delegation could not establish the existence of a consistent practice of ensuring that involuntary patients understand the scope of the court decision by, for example, providing them with a copy of the decision, as recommended by the Committee against Torture.[23] For instance, several persons interviewed by the delegation did not know how long they were expected to remain in the institution.

46. The Working Group observed that many patients in psychiatric institutions were held against their will. Even those who might have voluntarily entered the facilities could not leave freely. The Working Group did not receive any information on the establishment of an independent monitoring system for such facilities that would ensure that all places where people with intellectual and psychosocial disability are held for involuntary treatment are regularly visited to guarantee the proper implementation of the safeguards.

D. Deprivation of liberty in the context of the criminal justice system

47. Deprivation of liberty must at all times be objectively justified and the grounds for detention assessed, based on facts and not on a mere subjective suspicion. Liberty should therefore be the rule and detention the exception. In every place the delegation visited, it observed that many persons had been detained without a proper assessment of the need for

[21] Article 101 of the Criminal Procedure Code.
[22] See A/HRC/30/37, principle 20, and guideline 20.
[23] CAT/C/AZE/CO/4.

them to be detained and that detention, especially pretrial, lasted a very long time. The delegation also noted the existence of a high number of authorities with the power to deprive persons of liberty. Moreover, the Working Group observed that for the same offence, a person might be placed in detention under the responsibility of the Ministry of Justice, the Ministry of Internal Affairs and the State Security Service.

1. Legal definition of offences

48. According to international law, any grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid an overly broad or arbitrary interpretation or application.[24] This specifically applies to the most serious crimes including terrorism,[25] and it also relates to various crimes in Azerbaijan as shown below.

2. Administrative offences

49. The delegation observed that, in Azerbaijan, persons could be deprived of liberty for both administrative and criminal offences.

50. Among the administrative offences defined in broad terms which may lead to arbitrary deprivation of liberty are the so-called offences of hooliganism and refusal to obey public authorities. In addition, sentences for these offences are often disproportionate. For instance, the Working Group learned about the case of two young men who were serving their sentences for disobeying the police. Both were having a verbal quarrel over the telephone in a park and, for failing to comply with the police's request to stop, were arrested and sentenced to 10 and 15 days of imprisonment respectively.[26]

51. The Working Group considers that there should be legal clarity as to what constitutes incriminating acts; proportionality between the offences and the related sentences; and strict separation between law enforcement agents and the prosecution authorities. Also, the principle of contradiction in criminal justice, whereby the accused person is provided with effective legal assistance and representation throughout the process, must be fully respected, including in cases of administrative offences.

3. Right to be informed of the charges

52. Everyone charged with a criminal offence shall be informed promptly and in detail in a language that he or she understands of the nature and cause of the charges brought against him or her.[27]

53. Infringement of this right occurs in practice, especially with regard to children, persons from disadvantaged backgrounds and low literacy skills, as well as foreign nationals. In particular, the delegation met with an adolescent who indicated that at the time of arrest, he was unable to understand anything in relation to his judicial process. Another detainee was requested to sign documents presented in Latin script that the authorities knew that he could not read.

54. The delegation also met a non-national in pretrial detention who explained that he did not understand Azerbaijani and still did not understand the reasons for his arrest because the interpreter did not provide sufficient information during the hearing. Nevertheless, he was forced to sign documents in Azerbaijani.

---

[24] General comment No. 35 (2014) on liberty and security of person.

[25] See, for example, the joint study on global practices in relation to secret detention in the context of countering terrorism and the recommendations therein (A/HRC/13/42).

[26] Article 221.1 of the Criminal Code provides that "[h]ooliganism, that is the deliberate actions roughly breaking a social order, expressing obvious disrespect for a society, accompanying with application of violence on citizens or threat of its application, as well as destruction or damage of another's property ... is punished by public works for the term from hundred sixty up to two hundred, or corrective works for the term up to one year, or imprisonment for the term up to one year".

[27] See article 9 (2) of the International Covenant on Civil and Political Rights and A/HRC/30/37, annex, principle 7.

55. The Working Group was concerned about arrests for administrative offences and subsequent investigations under criminal charges. In particular, the Working Group met with six individuals of different nationalities who were detained for administrative offences, but investigated for other serious crimes. They were held in detention in the Investigation Isolator and Temporary Detention Facility of the State Security Service in Baku, which could reportedly only detain persons suspected of especially grave crimes such as terrorism, human trafficking, treason and drug-related crimes. None of these individuals was informed that investigations were being conducted against them in connection with crimes other than administrative offences.

4. Effective access to legal counsel and to legal aid

56. The right to legal assistance is an essential safeguard for individuals involved in any criminal justice process. Persons deprived of their liberty shall have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the apprehension. Upon arrest, all persons must be promptly informed of this right.[28] This also applies in cases where the person is deprived of liberty for administrative offences. The delegation observed examples of the lack of implementation of these standards in practice.

57. Although both the Constitution and the Code of Criminal Procedure enshrine the right to legal assistance, in practice, the delegation received overwhelming information on the non-observance of this right, against the interests of both adult and juvenile offenders.

58. While interviewing detainees, the Working Group observed that many had never met with any lawyer. The majority of those who did have such a meeting were provided with a State lawyer and had no opportunity to choose their own counsel. Most of these detainees were not afforded the opportunity to meet with their lawyer in private at any stage of the process and/or only met with their lawyer during interrogations and court hearings, even when accused of the most serious offences. Such practices undermine the right to a fair and public hearing, guaranteed by the international instruments ratified by Azerbaijan.[29]

59. Much of the testimony collected during the mission shows that the only advice given to detainees by State lawyers was to cooperate with investigators and to confess to the commission of the offence for which they had been charged. Some detainees were not aware of the right to be legally assisted during judicial proceedings and to appeal a court decision.

60. The Working Group considers that this situation may be the result of either a low number of lawyers available to represent accused persons, the inability of lawyers to adequately advise individuals facing criminal justice or their possible lack of independence. The delegation received abundant information related to the denial or obstruction of the right of accused or convicted persons to be legally represented and to communicate freely with their lawyer, in particular by the administration of some detention centres, especially those dealing with the most serious offences.

61. The Working Group notes that such an assessment is contrary to the view expressed by the President of the Bar Association, who stated that there is currently no shortage of lawyers in the country and that anyone arrested gets proper legal assistance from the one thousand lawyers operating in the country. Yet, in Ganja, the second largest city in the country, public officials acknowledged shortcomings in this respect and stated the figure of only 40 lawyers practising in the region. In Nakhchivan Autonomous Republic, authorities similarly mentioned that the local Bar Association had only 20 registered lawyers. Consequently, there appear to be considerable inconsistencies between the information that the Bar Association has and what the delegation received in parts of the country.

62. In relation to the independence of the legal profession, the Working Group is concerned about information regarding certain disciplinary measures and, in particular, the

[28] A/HRC/30/37, annex, principle 9. See also article 14 (3) (d) of the International Covenant on Civil and Political Rights.

[29] Ibid., articles 14 (1) and (3) (d).

suspension and disbarment of two lawyers involved in cases of political activists. The Working Group has not received any information that could objectively justify these disciplinary sanctions and is convinced that such decisions adversely impact the independence of the legal profession in Azerbaijan.

5. Prohibition of torture and other forms of ill-treatment

63. The Working Group received much testimony from juveniles, women and men about torture and ill-treatment they had reportedly been subjected to while in the custody of different authorities.

64. In most cases, this practice sought to obtain confessions from detainees and/or coerce them to sign the police "protocols" for administrative offences. Such treatment was reported by persons currently or previously detained in all criminal justice detention places visited, except the Juvenile Detention Centre of Baku. Interviewees described guns pointed at their heads; prolonged severe beatings; verbal abuse and psychological pressure; practices such as making one kneel for long hours; and threats of physical and sexual violence; as well as threats to arrest family members.

65. In Ganja Pretrial Detention Facility No. 2, the delegation sought access to the basement where torture had been reported by highly reliable sources. When asked, public officials recognized misconduct by the previous administration, which had led to the ongoing legal proceedings against the previous head of the facility. However, the Working Group is also concerned that the conditions in which detainees, including children, are held in this facility amount per se to inhuman and degrading treatment. Such conditions included the state of disrepair of the buildings, substandard and unhygienic sanitation installations, the presence of rats in cells and an extreme lack of ventilation in overcrowded cells where inmates are forced to take turns sleeping.

66. The Working Group received information from officials that numerous investigations of torture were taking place, but nevertheless did not receive the exact data on the investigations conducted and their outcome, including sentencing of the perpetrators. The delegation also received frequent allegations that the Ombudsman hotline established to denounce instances of torture located in some of the facilities did not work. Furthermore, the delegation observed that in most of the detention centres it visited, posters with information about the hotline were non-existent or inaccessible to detainees.

67. In light of these observations, the Working Group recalls that everyone charged with a criminal offence has the right not be compelled to give incriminating evidence or to confess guilt. Any statement that is established to have been made or any other evidence obtained as a result of torture or other cruel, inhuman or degrading treatment shall not be accepted as evidence in any proceedings.[30] Anyone has the right not to testify against themselves.[31] The failure to observe these rights may result in arbitrary detention.

6. Right to be tried without undue delay and to be brought promptly before a judge

68. Everyone charged with a criminal offence has the right to be promptly brought before a judge and to be tried without undue delay.[32] Any delay beyond 48 hours before being presented to a judge after arrest and detention must remain exceptional and justified. Judicial authorities should ensure that the pretrial detention of an accused person does not exceed a reasonable time. These international norms are reflected in the Code of Criminal Procedure, which states that if no decision is taken within 24 hours of the person being detained, the person must be released immediately and even if such decision is taken, the detention of the person may not exceed 48 hours. Furthermore, the same Code establishes time limits of pretrial detention depending on the gravity of the crime, which can only be prolonged to 18 months for the completion of criminal investigations.

---

[30] Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (in full).

[31] Article 14 (3) (g) of the International Covenant on Civil and Political Rights.

[32] Ibid., art. 14 (3) (c).

69. The Working Group observed multiple instances when these legal provisions were not upheld in practice. For instance, the delegation gathered evidence of persons detained for several days in police stations and temporary detention facilities without being presented to a judge. Furthermore, the Working Group noted instances of judges extending pretrial detention without due assessment of the circumstances. In addition, in not a single instance examined by the Working Group, whether in the testimonies or interviews with authorities including the case law provided, had a detainee been questioned by the judge on his or her treatment in custody.[33]

7. Children's rights and juvenile justice system

70. In 1998, Azerbaijan adopted the Law on the Rights of the Child which contains guarantees in line with international juvenile justice standards, except for pretrial detention. In practice, however, the delegation could note observe a significant difference between the treatment of children and adults in the criminal justice system. It observed the punitive nature of the criminal justice system towards children, especially during its visit to the Juvenile Detention Centre of Baku and to the juvenile section of the Ganja Detention Centre.

71. Out of the 35 children held in Baku, one third had been convicted as primary offenders for minor offences such as robbery, intimidation or theft of a vehicle and condemned to harsh sentences of up to seven years of imprisonment. One child was serving a six-year sentence for driving a vehicle in a state of intoxication.

72. The Working Group could not obtain information on the availability or development of alternatives to detention such as educational measures, referral to social services and probation or community-based diversion programmes. Moreover, the delegation understood from an official that for certain grave crimes, the detention of the child was even considered compulsory.

73. The delegation also gathered information on serious violations of the right of children to a fair trial. None of the interviewed children was given access to a lawyer upon arrest, properly informed about the charges, questioned in presence of at least one of his or her parents or given access to a doctor. Although, according to domestic law, no child should be detained more than 24 hours without a judicial order, all interviewed juveniles spent much lengthier periods in police custody. The Criminal Code provides that criminal proceedings concerning children shall be conducted without delay. There is, however, no specific limitation of pretrial detention for children and the delegation met many who had spent considerable time in pretrial detention.

74. Mistreatment of detained children appears to be widespread. Many children reported ill-treatment upon arrest. One child indicated that he was forced to kneel for two days until investigators obtained his confession. Children are also likely to become victims of mistreatment by other inmates. There is no specific facility for children in police stations and the delegation observed in Ganja that children were detained in a cell close to adult detainees and were in regular contact with them, contrary to applicable international standards.[34]

75. The only detention facility for convicted juveniles is located in Baku, far from families of those children from other parts of the country. This situation precludes some of these children from maintaining family relations. Isolated from their family, they are unlikely to get any support and to defend their rights. This situation also makes it difficult for these juveniles to reintegrate in the society after serving their sentence.

---

[33] The Working Group received a set of judicial decisions from public officials who argued that the law was respected but in not one of those decisions could the Working Group find any information in such regard. The facts in those decisions confirmed that the strict timeline was not complied with.

[34] The Convention on the Rights of the Child, to which Azerbaijan is a party since 1992, requires in its article 37 (c) that "[e]very child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person ... in particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so".

76. Finally, when visiting the pretrial prison in Ganja, the Working Group observed that some juveniles in this detention facility were held in substandard conditions, which posed a danger to their health. During its interactions with juveniles deprived of their liberty, the Working Group did not observe any educational programmes or recreational activities.

8. Allegations of corruption of law enforcement authorities and the judiciary

77. The Working Group is concerned about the high number of accounts it received from persons suspected or accused of an offence, who were allegedly victims of corruption by law enforcement officials or judicial authorities.

78. The delegation was informed by a juvenile that his mother had been requested by the Prosecutor's Office to pay in order to have the charges against him softened. As she refused, the prosecutor reportedly appealed the conditional sentence pronounced by the first instance magistrate and obtained a six-year prison sentence from the appellate court. This sentence was later reduced by half by the Supreme Court. The Working Group was also informed of a case when the police demanded a bribe for minor administrative infringement and the failure to bring the requested amount led to charges against the person before a court of first instance.

79. Information was also received about officials from several detention facilities reportedly being involved in extorting money in exchange for services within the facilities, including family visits and the permission to receive parcels. For instance, in the detention facility in Ganja, inmates reported that money (70 manats, equivalent to approximately 42 United States dollars) was being requested for family visits. As a result, some parents could not see their children.

E. Deprivation of liberty in the context of the rights to freedom of opinion and expression, and to peaceful assembly and association

80. During its visit, the Working Group gathered information from various sources that human rights defenders, journalists, political opponents and religious leaders who criticize the Government and its policies face limitations to their work and personal freedom. Additionally, the Working Group was made aware of at least 70 such individuals who were reportedly detained on charges that included drugs- and arms-related offences, hooliganism and tax evasion. The delegation also learned that lawyers who assisted in bringing cases of human rights defenders to the European Court of Human Rights had been detained on charges of tax evasion, illegal entrepreneurship and abuse of authority. The Working Group met and interviewed some of these persons in detention facilities, as well as those who had already served their sentences or who had been pardoned. It received repeated allegations of the lack of legal basis justifying the deprivation of liberty as well as of violations of due process rights, constituting prima facie breaches of international law, including attempts to extract confessions through the use of force, to pressure witnesses to testify against defendants and the lack of genuine judicial review of the lawfulness of detentions.

81. Furthermore, the Working Group was informed that on 10 May 2016, two students were arrested shortly after they drew graffiti on a statue of the former President of Azerbaijan in the centre of Baku, reportedly as a form of political protest. Both have subsequently faced drug-related charges and were reported to have been subjected to violent interrogation techniques at a police station before being placed by the Khatai District Court under pretrial detention for a period of four months. The Working Group visited the two students in the Kurdakhani Pretrial Detention Facility and observed possible physical sequels of such ill-treatment, in the form of visible marks on parts of their bodies. Purportedly, judges who saw these two students after the arrest did not react to their allegations of ill-treatment.

82. The Working Group notes that over the past years, the European Court of Human Rights has considered a number of cases from Azerbaijan concerning the detention of

individuals expressing opinions not in line with those of the ruling political establishment.[39] The Court's jurisprudence points to a pattern of unlawful deprivation of liberty of such individuals and of interference with their freedom of expression, assembly and political participation. In December 2015, the Council of Europe Secretary General launched an inquiry under article 52 of the European Convention on Human Rights into compliance by Azerbaijan with its commitments under the Convention, including the failure of Azerbaijan to carry out the rulings of the European Court of Human Rights.

61. The Working Group also recalls its own opinions whereby it found detentions of members of minority religious community as well as of a journalist and a human rights defender to be arbitrary, falling within categories II, III and V.[40] There have also been several joint urgent appeals of special procedure mandate holders concerning alleged arbitrary detentions of human rights defenders, youth activists and journalists.[41]

62. In 2015, the Committee against Torture expressed its serious concerns about amendments to the Code of Administrative Offences extending the maximum period of administrative detention from 15 days to two months, notably for those violating the rules on holding rallies,[42] and the punishment of members of civil society with heavy prison sentences.[43] Earlier, the European Commissioner for Human Rights had expressed concerns about the Law on Freedom of Assembly and the Criminal Code, as well as the Code of Administrative Offences.[44]

63. The Working Group notes that the Human Rights Committee has also expressed concerns at "[c]onsistent reports of intimidation and harassment, including arbitrary arrest and detention, ill-treatment and conviction of human rights defenders, youth activists, political opponents, independent journalists and bloggers on allegedly politically motivated trumped-up administrative or criminal charges of hooliganism, drug possession, economic crimes, tax evasion, abuse of office, incitement to violence or hatred".[45] The Committee called on the authorities to "take immediate steps to end any repression against [these] categories of persons" and to "take all measures necessary to guarantee the full enjoyment of freedom of expression by everyone in practice".[46]

V. Conclusions

64. **The Working Group welcomes the fact that Azerbaijan has embarked on a series of reforms aimed at bringing the administration of justice in line with international human rights standards, namely the prison and judicial system reforms as well as improvement of the legislative framework. Nevertheless, the situation in Azerbaijan presents several matters of concern, particularly in regard to the deprivation of liberty on health-related grounds, in the context of the criminal justice**

---

[39] *Ilgar Mammadov v. Azerbaijan* (Application No. 15172/13); *Mahalis Ismayilova v. Azerbaijan* (Application No. 30778/15); *Rasul Jafarov v. Azerbaijan* (Application No. 69981/14); *Ibrahimov and Others v. Azerbaijan* (Applications nos. 69234/11, 69235/11 and 69335/11); *Hasanov and Others v. Azerbaijan* (Applications nos. 67360/11, 67906/11 and 69370/11); *Yagublu v. Azerbaijan* (Application No. 31709/13); *Gafgaz Mammadov v. Azerbaijan* (Application No. 60259/11); *Mehdiyev v. Azerbaijan* (Application No. 59075/09); *Emin Huseynov v. Azerbaijan* (Application No. 59135/09); and *Zeynalov v. Azerbaijan* (Application No. 37848/08).

[40] See the methods of work of the Working Group on Arbitrary Detention (A/HRC/33/66).

[41] See Opinion No. 42/2015 (Azerbaijan); Opinion No. 59/2013 (Azerbaijan); Opinion No. 22/2011 (Azerbaijan); JUA 22/03/2012 Case No. AZE 2/2012; JUA 01/02/2013 Case No. AZE 2/2013; JUA 26/07/2013 Case No. 4/2013; JUA 13/02/2015 Case No. AZE 1/2015; and JUA 19/08/2015 Case No. AZE 3/2015.

[42] These amendments to the Code of Administrative Offences were adopted by the Parliament on 14 May 2013.

[43] CAT/C/AZE/CO/4, para. 10.

[44] Report by the Commissioner for Human Rights of the Council of Europe, following his visit to Azerbaijan from 22 to 24 May 2013 (CommDH(2013)14).

[45] CCPR/C/AZE/CO/4, para. 36 (a).

[46] *Ibid.*, para. 37.

as well as the detention of individuals expressing opinions that are not in line with those of the Government.

67. The Working Group observes that human rights defenders, journalists, political and religious leaders continue to be regularly detained under criminal or administrative charges. These practices are contrary to the obligations of Azerbaijan under international human rights law.

68. There is currently no functional juvenile justice system and legislative efforts are yet to be translated into practice. Children in conflict with the law are treated as adult offenders. International juvenile justice standards are disregarded in practice and legal proceedings against children do not meet international safeguards. Even for children who have committed minor offences, detention is, most of the time, the only available option.

69. The Working Group notes that Azerbaijan has ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and that the Office of the Commissioner for Human Rights of the Republic of Azerbaijan was designated as its National Preventive Mechanism under its terms. The Working Group noted however the absence of the requisite independent oversight in variety of detention places and is mindful that such independent oversight, which must be ensured as per the terms of the Optional Protocol, makes an important contribution towards both the detection and prevention of instances of arbitrary detention.

VI. Recommendations

90. On the basis of its findings and in a spirit of cooperation, the Working Group calls on the Government to ensure that the positive legislative and institutional developments regarding deprivation of liberty described in the present report are accompanied by effective implementation measures in compliance with international human rights standards.

91. To this end, the Working Group makes the following recommendations to the Government:

(a) Ensure that any detention as a result of criminal activities shall be under the control of the prosecutorial authority with the oversight of the judiciary;

(b) Ensure that the judiciary exercises the necessary oversight and control of all situations of deprivation of liberty and that a person deprived of liberty is able to challenge the legality of such detention before a competent judicial authority, with fully granted legal assistance for that purpose, and that the judicial authority is able to order the release;

(c) Take necessary measures to ensure that the Public Affairs Committee has sufficient independence in order to play a more effective role. Such autonomy will allow it to assist the Government in the oversight of all situations of deprivation of liberty;

(d) Ensure that the National Preventive Mechanism is able to and in fact discharges its mandate independently and that the respective authorities engage with the Mechanism constructively on the implementation of its recommendations;

(e) Fully enforce the decisions of the European Court of Human Rights. Such enforcement entails both paying the necessary reparations to the victims but more importantly ending the arbitrary deprivation of liberty and ensuring the guarantee of non-repetition;

(f) Take decisive measures to ensure that the Nakhichevan Autonomous Republic is subject to closer scrutiny by national authorities and by external oversight mechanisms, such as the Council of Europe and the United Nations special procedures.

97. In relation to the criminal justice system, the Working Group recommends that the Government:

(a) Take necessary steps to ensure that offences are precisely defined in national legislation in order to uphold the principle of legality and, in this context, review and amend the current definition of, inter alia, terrorism and administrative offences;

(b) Ensure that detention is not the general practice in the criminal justice system, especially if one has not yet been convicted, and ensure that the need for pretrial detention is determined on an individual basis and used solely for the purpose of ensuring that the accused does not jeopardize the evidence or endanger the victim, witnesses or the community, and remains available for trial. Pretrial detention should also be limited to serious offences which would carry a sentence of imprisonment;

(c) Use alternatives to detention, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), and in relation to the pretrial stage, establish a system for arranging bail and making more frequent use of non-custodial measures in the case of less serious offences.

98. In relation to fundamental legal safeguards, the Working Group recommends that Government:

(a) Ensure that all suspects benefit from other basic safeguards provided for by law, which include their right to be examined by an independent physician in full confidentiality; to contact a relative or friend; to be informed of their rights and the charges against them; and to be brought before a judge without delay. It also recommends that the Government ensure that any public official who denies fundamental legal safeguards to persons deprived of their liberty is disciplined or prosecuted;

(b) Systematically inform all individuals deprived of their liberty, in writing and in a language they understand, of the reason for their detention, of their rights and how to exercise them. This includes their right to have access to a lawyer and the right to promptly challenge their detention.

99. In relation to access to legal counsel, the Working Group recommends that the Government:

(a) Ensure that relevant legal provisions are strictly enforced to guarantee access to legal counsel from the outset of a person's deprivation of liberty and subsequently throughout the entire period of detention. This includes providing detainees with means to contact legal counsel of their choice;

(b) Guarantee that all persons deprived of liberty have access to effective and prompt legal aid to ensure that the unaffordable cost of legal counsel does not prevent a barrier to a detainee without adequate means, or his or her representative, to bring proceedings before a court;

(c) Ensure that the confidentiality of communications between persons deprived of liberty and their legal counsel is respected, including meetings, correspondence, telephone calls and other forms of communications. In the event that such confidentiality is broken, any information obtained shall be considered inadmissible as evidence in court;

(d) Ensure that sufficient safeguards are in place, both in law and in practice, to guarantee the full independence of lawyers. In this respect, refrain from any actions that may constitute harassment, persecution or undue interference in the work of lawyers, including their suspension, disbarment or other disciplinary action, and ensure that they are trained on a continuous basis with regard to their ethical obligations and independence;

(e) Sustain efforts to address the shortage of lawyers, including by ensuring that admission to the Bar can only be denied on the basis of objective criteria such as relevant knowledge and qualifications; ensure that lawyers providing legal aid are

properly remunerated and that State-appointed defence lawyers provide adequate legal representation.

95. **In relation to allegations of torture and forced confessions, the Working Group recommends that the Government:**

(a) **Take immediate measures to combat torture and end the practice of impunity, and ensure, in law and in practice, that every person has access to independent complaints mechanisms that will effectively investigate and respond promptly; that alleged perpetrators are prosecuted and, if they are found guilty, receive sentences that are commensurate with the gravity of their acts; and that victims are afforded appropriate redress;**

(b) **Revise the current approach of the confessions-based criminal justice system which incentivizes law enforcement officials to extract confessions, and ensure that the law enforcement officials have effective access to and the know-how to use modern approaches to crime-solving, thus removing the need to secure confessions from suspects;**

(c) **Deliver a clear message through appropriate channels and take immediate steps to ensure that, in practice, statements made as a result of torture or other cruel, inhuman or degrading treatment may not be invoked as evidence in any proceedings, except against the person accused of such torture; review cases of convictions based solely on confessions, recognizing that many of these may have been based upon evidence obtained through torture or ill-treatment, and, as appropriate, provide prompt and impartial investigations and take appropriate remedial measures; and ensure that any persons convicted on the basis of coerced evidence or as a result of torture or ill-treatment are afforded new trials and adequate redress.**

96. **In relation to conditions of detention, the Working Group recommends that the Government, in order to strengthen due process guarantees, intensify efforts to address overcrowding in places of detention, including by resorting to non-custodial alternative measures to detention, combat corruption within prison facilities and improve conditions of detention in accordance with the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).**

97. **In relation to allegations of corruption, the Working Group recommends that the Government establish a comprehensive system to address corruption in the judicial system, including among judges, law enforcement officials and prison staff, which might lead to arbitrary detention. Such a system should include a mechanism for reporting instances of corruption without jeopardizing the safety of the detainees as well as efforts to effectively prosecute and appropriately punish perpetrators. The Government should ensure that the subject of fighting corruption is part of the training curriculum for judges, law enforcement officials and prison staff.**

98. **The Working Group recommends that the Government undertake legislative and institutional reform aimed at designing a comprehensive juvenile justice system in full accordance with international norms, and that it:**

(a) **Ensure that arrest, detention or imprisonment of a child is used only as a measure of last resort and for the shortest appropriate period of time. The detention of juveniles should be limited to the most exceptional instances;**

(b) **Develop a wide range of alternatives to the detention as well as measures to ensure the best interest of the child, as well as to guarantee that children are treated in a manner appropriate to their well-being, and proportionate to both their circumstances and the offence committed. These should include care, guidance and supervision, counselling, probation, foster care, educational programmes, and other alternatives to institutional care;**

(c) **Ensure the exercise of the right to challenge the arbitrariness and lawfulness of the detention of children and render it accessible, age appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of**

children. Authorities overseeing the detention of children should ex officio request courts to review the lawfulness of their detention. This practice should not exclude the right of any child deprived of liberty to bring such proceedings before a court in his or her own name or, if it is in his or her best interests, through a representative or an appropriate body;

(d) Ensure due process for children deprived of their liberty, including ensuring that children are able to contact their parents or guardians immediately and are able to consult with them freely and in full confidentiality; the provision of legal or other appropriate assistance free of charge in all proceedings and ensuring that information on rights is provided in a manner appropriate for the child's age and maturity, in language, means, modes and formats that the child can understand and in a manner that is gender- and culture-sensitive;

(e) Ensure that national laws stipulate measures aimed at the prevention of ill-treatment or intimidation of a child in detention, and provide for sanctions of persons in violation of such laws;

(f) Ensure that juveniles are effectively separated from adults in all detention places. Safe, child-sensitive environments for children deprived of their liberty should be established. Detained children should be treated with dignity and respect, and in a manner that takes into account any element leading to vulnerability, and all children in detention must have effective access to education and recreation.

99. In relation to migrants, asylum seekers and refugees, the Working Group recommends that the Government ensure that:

(a) Detention of asylum seekers and other non-citizens is only used as a measure of last resort, and then only for the shortest possible time, following an individual assessment of the necessity and proportionality of detention;

(b) Immigrants facing expulsion, deportation and especially detention, however temporary, are given access to justice, with necessary legal assistance to enable them to challenge their detention in a court of law;

(c) Detainees are held in special immigration detention centres in conditions appropriate for their status as non-convicted persons, and not together with persons charged with or convicted of criminal offences (unless so charged or convicted themselves);

100. The Working Group recommends that the Government:

(a) Investigate promptly, thoroughly and impartially all allegations of arbitrary arrest and detention of human rights defenders, journalists, political opponents and religious leaders; and prosecute and punish appropriately those found guilty and provide victims with redress;

(b) Guarantee that these individuals are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort, and release those who have been deprived of their liberty in retaliation for their professional activities.

101. In relation to the deprivation of liberty of persons with disabilities, the Working Group recommends that the Government:

(a) Undertake sustained efforts aimed at ending the practice of institutionalization of persons with psychosocial disabilities, and take necessary steps to prohibit involuntary internment and forced treatment on the grounds of the existence of an impairment or perceived impairment, particularly on the basis of existing or perceived psychosocial or intellectual disability;

(b) Ensure that the deprivation of liberty of a person with a disability is required to be in conformity with the law, including international law, offering the same substantive and procedural guarantees available to others and consistent with the right to humane treatment and the inherent dignity of the person;

(c) **Ensure that persons with psychosocial or intellectual disabilities deprived of liberty are duly informed of their right to challenge the decision, in order to enable them to exercise their prior and informed consent, and are provided with appropriate support;**

(d) **Establish a mechanism complete with due process of law guarantees to review cases of placement of persons with disabilities in any situation of deprivation of liberty without specific, free and informed consent. Such reviews are to include the possibility of appeal;**

(e) **Enact an enforceable right for persons with psychosocial or intellectual disabilities to live in the community and be provided with health services that are free from coercion and restriction; additionally, ensure that legislation and practice relating to any hospitalization of persons respect due process guarantees;**

(f) **Provide procedural accommodation for persons with disabilities as well as accessibility and reasonable accommodation for the exercise of the substantive rights of access to justice and equal recognition before the law, and, to this end, expand access to the treatment of psychosocial or intellectual disabilities outside the criminal justice system and develop pre-arrest and pretrial intervention programmes aimed at preventing the incarceration of persons in need of mental health treatment.**[47]

[47] See A/HRC/30/37, para. 69.

Annex

Detention facilities visited

Baku

- Prison No. 2
- Psychiatric care institution Republican Psychiatric Hospital No. 1
- Women's Prison No. 4
- Juvenile Detention Centre of Baku
- Kurdakhani Detention Centre (Baku Investigative Prison No. 1)
- Residential institution No. 7 for children with disabilities
- Gabu special boarding school
- Principal Department on the Fight against organized crime
- Temporary Detention Center and Pre-trial Prison of the State Security Service
- Kurdakhani Center for Irregular Migrants
- Nizami District Police Station

Ganja

- Psychiatric hospital of Ganja
- Göygöl District Psychoneurological Boarding Home No. 8
- Kapaz Police Division
- Ganja City Police Station
- Ganja Investigatory Isolation Ward
- Pre-trial detention facility (Investigative Isolator/SIZO) No. 2
- Main City Police Department and temporary detention centre of Ganja/Kapaz

Nakhchivan

- Disciplinary unit of Nakhchivan Garrison
- Temporary detention centre for persons who have violated the border regime
- Psychiatric hospital Nakhchivan
- Prison in Kengerli, Boyuk duz